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(Filed Separately)

CONFIDENTIAL

FIRST DISCUSSION DRAFT

AN ACT RESPECTING CHILDREN AND YOUNG PERSONS

Department of the Solicitor General

Ottawa

September, 1967

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FIRST DISCUSSION DRAFT

AN ACT RESPECTING CHILDREN AND YOUNG PERSONS

TITLE

TEXT	EXPLANATORY NOTES
1. This Act may be cited as the Children and Young Persons Act.	Recommendation 6 states that "The title of the 'Juvenile Delinquents Act' should be changed to 'Children and Young Persons Act'". This change of terminology, in the view of the Committee, represents an attempt to eliminate the stigma that attached to the expression "Juvenile Delinquents". (See paragraph 88 of the Report) NOTE: Throughout these notes, the "Report" referred to is The Report of the Department of Justice Committee on Juvenile Delinquency (1965). The "Committee" referred to is the Department of Justice Committee. The "recommendations" referred to are those contained in paragraph 435 of the Report (See ch. XIV, at page 283 et seq.) The "paragraphs" referred to are paragraphs in the Report.
2. In this Act,	

....

INTERPRETATION

TEXT	EXPLANATORY NOTES
(1) "adjudication" means any finding of a Juvenile Court concerning whether an information has been proved or whether a child or young person, as the case may be, is or is not a child offender, a young offender or a violator, and includes an order made pursuant to section 56.	
(2) "adjudicatory hearing" means any hearing to determine whether the allegations of an information are supported by (a preponderance of) evidence and whether a child or young person should be adjudged to be, as the case may be, a child offender, a young offender, or a violator.	
(3) "adult" means a person who is seventeen years of age or more.	
(4) "child" means any boy or girl who is ten (or twelve) years of age or more and is under the age of fourteen.	The Report stated that the minimum age should be specified as 10 or, at most, 12, with the possibility of a flexible or variable minimum age. It was recommended that this minimum age be the subject of discussion between federal and provincial governments.

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INTERPRETATION

TEXT	EXPLANATORY NOTES
(4) (Cont'd)	(See recommendation 7, and also paragraphs 111, 114 and 116). This section, as drafted, does not provide for flexibility, because the recommendation for a uniform minimum age of responsibility and that for a variable minimum age are in conflict. This recommendation concerns the minimum age of criminal responsibility; it implies that section 12 of the Criminal Code would have to be amended. If it is not amended to conform with the above minimum age, it would operate to the effect that children between the ages of 7 and the new minimum age (10 or 12) would be subject to the full rigors of the adult courts. This cannot be the intention of the Committee, and, consequently, section 12 of the Criminal Code would require an amendment raising the age of criminal responsibility to whatever minimum age is adopted by this section. In relation to the same problem, recommendation 8 of the Report recommends that section 13 of the Criminal Code should be abolished.

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INTERPRETATION

TEXT	EXPLANATORY NOTES
(4) (Cont'd)	That section provides that "No person shall be convicted of an offence in respect of an act or omission on his part while he was seven years of age or more, but under the age of fourteen years, unless he was competent to know the nature and consequences of his conduct and to appreciate that it was wrong." Raising the age of criminal responsibility to the same level in both the Criminal Code and the revised Act, and making the new Act applicable throughout Canada would have the effect of bringing all juveniles, proceeded against for offences, into the juvenile courts. This in turn raises the question as to whether section 13 of the Criminal Code would any longer be necessary. The Committee recommended its repeal.
(5) "child offender" means a child who commits an offence.	See comments below concerning the "young offender". The "child offender" would be treated slightly differently from the "young offender"; for instance, he would not be subject to having his case waived to the ordinary criminal courts, and he would be subject to a less severe disposition, as in the case of fines. (See Paragraph 150).

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INTERPRETATION

TEXT	EXPLANATORY NOTES
(6) "court of appeal" means (a) in the Province of Ontario, the Court of Appeal;	In recommendation 60, concerning the right of appeal, the Committee states that "the accused should have a direct right of appeal to the court of appeal." Present section 37 provides that the appeal shall be to a Supreme Court Judge, with a further appeal to the Court of Appeal. In para. 275 of their report, the members of the Committee do not define "Court of Appeal". This section adopts the definition that is given by the Criminal Code, section 2 (9), in view of the following comment made by the Committee: "Adoption of the scheme we propose would permit important questions of law to be decided by the one tribunal whose pronouncements apply throughout the Province". The court of appeal as defined by the Criminal Code is that tribunal.
(b) in the Province of Quebec, the Court of Queen's Bench, appeal side;	
(c) in the Province of Nova Scotia, the Appeal Division of the Supreme Court;	

...

INTERPRETATION

TEXT

EXPLANATORY NOTES

(6) (Cont'd)

(d) in the Province of New Brunswick, the Court of Appeal, otherwise known as the Appeal Division of the Supreme Court;

(e) in the Province of British Columbia, the Court of Appeal;

(f) in the Province of Prince Edward Island, the Supreme Court;

(g) in the Province of Manitoba, the Court of Appeal;

(h) in the Province of Saskatchewan, the Court of Appeal;

(i) in the Province of Alberta, the Appellate Division of the Supreme Court;

(j) in the Province of Newfoundland, the Supreme Court, constituted by two or more of the judges thereof;

(k) in the Yukon Territory, the Court of Appeal; and

(l) in the Northwest Territories, the Court of Appeal.

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INTERPRETATION

TEXT	EXPLANATORY NOTES
(7) "defendant" means any child or young person or adult against whom proceedings are instituted under this Act.	
(8) "disposition" means any order concerning a child or young person, as the case may be, adjudged to be a child offender, a young offender or a violator, pursuant to paragraph (d) of section 57.	
(9) "a judge" or "the judge" or "juvenile court judge" means a judge of a juvenile court.	
(10) "juvenile court" means any court duly established under any provincial statute for the purpose of dealing with children and young persons under this Act, or specially authorized by provincial statute, the Governor-in-Council, or the Lieutenant-Governor in Council to deal with children and young persons under this act.	Adapted from present section 2(b) of the Juvenile Delinquents Act.
(11) "municipality" includes the corporation of a city, town, village, county, township, parish or other territorial or local division of a province, the inhabitants of which are incorporated or are entitled to hold property collectively for a public purpose.	Copied from section 2(26) of the Criminal Code.

INTERPRETATION

TEXT	EXPLANATORY NOTES
(12) "offence" means any act of commission or omission contrary to the Criminal Code or to any statute or to any provision of any statute of the Parliament of Canada or of the Legislature of a Province named in the Schedule, which Schedule may be amended from time to time by proclamation of the Governor-in-Council (a) by adding thereto any statute or any provision of any statute of the Parliament of Canada or of the Legislature of a Province, or (b) by deleting therefrom any statute or any provision of any statute of the Parliament of Canada or of the Legislature of a Province.	The Report recommended the abolition of the offence of delinquency, set out in section 3(1) of the present Act. (See recommendation 11, and also paragraph 146). The Report recommended distinguishing between offences of greater and lesser degrees. An offence constituting a violation of the Criminal Code or "provisions of other federal or provincial statutes as are from time to time designated by the Governor-in-Council" would be considered to be an offence of greater degree. (See recommendation 12, and also paragraph 149). Section 28(5) of the new Interpretation Act was looked at in drafting this definition. By section 28(29) of the new Interpretation Act, "province" includes the Yukon Territory and the Northwest Territories. By section 28(18) of the new Interpretation Act, "legislature" includes the Lieutenant-Governor-in-Council and the Legislative Assembly of the Northwest Territories, the Commissioner in Council of the Yukon Territory and the Commissioner in Council of the Northwest Territories.

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INTERPRETATION

TEXT	EXPLANATORY NOTES
(13) "probation officer" means any probation officer duly appointed under the provisions of any provincial statute or of this Act.	Present section 2(1)(j) of the Juvenile Delinquents Act.
(14) "prosecutor" means the Attorney General or, where the Attorney General does not intervene, the person who institutes proceedings to which this Act applies, and includes counsel acting on behalf of either of them.	The Committee recommended that a Crown Attorney be in attendance in proceedings in the juvenile court. There was no specific recommendation that he conduct the proceedings. (Recommendation 49). This definition taken from section 2(33) of the Criminal Code indicates that the prosecution should ordinarily be conducted by counsel acting on behalf of the Attorney General; the informant or his counsel may act in default of the Attorney General's intervention.
(15) "territorial division" includes any province, county, union of counties, township, city, town, parish or other judicial division or place to which the context applies.	This definition has been copied from Section 2(39) of the Criminal Code.

...

INTERPRETATION

TEXT	EXPLANATORY NOTES
(16) "training school" means any reformative institution for children or young persons duly approved by provincial statute or by the Lieutenant Governor-in-Council in any province, and includes such an institution in a province other than that in which the committal is made, when such institution is otherwise available.	Recommendation 75: "The expression 'industrial school' should be replaced by the term 'training school'". (See also paragraph 312).
(17) "young offender" means a young person who commits an offence.	The Report indicated that a distinction should be made between "offenders" on the basis of age. The "young offender" could then be subject to treatment somewhat different from that accorded to the "child offender". This would be apparent in the disposition provisions, and in the waiver of jurisdiction provisions, for example. (See paragraph 150).
(18) "young person" means any boy or girl who is fourteen years of age or more and is under the age of seventeen.	The Report stated that the maximum age should be uniform throughout Canada and should be set at 17. 17 year olds would not, therefore, ordinarily come under the jurisdiction of the Act. (See recommendation 9, and also paragraphs 132 and 136 of the Report)

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INTERPRETATION

TEXT	EXPLANATORY NOTES
(19) "violation" means any act of commission or omission contrary to any statute of the Parliament of Canada or of the Legislature of a Province that is not included in the Schedule, or of any by-law of any municipality, or any regulation or ordinance.	As noted above, the Report recommended distinguishing between offences of greater and lesser degrees. An offence other than one as described above (under the definition of offence) would be considered an offence of lesser degree. This would include any other offence, "whether against a federal or provincial statute, a municipal by-law, or a regulation or ordinance". (See recommendation 12, and also paragraph 149).

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INTERPRETATION

TEXT	EXPLANATORY NOTES
(20) "violator" means a young person or a child who commits a violation.	A "violator" would have committed an offence of a lesser degree, and would not be subject to all the means of disposition to which an "offender" would be subject. (See recommendation 12, and also paragraph 149). The Report made no mention of distinguishing between "violators" on an age basis. Presumably it was thought that there was no need to distinguish between "violators" under the age of 14, and those over the age of 14. The Report did not speak of, or recommend, the term "violator"; it simply referred to the term "violation". The term "violator" is being used with some misgiving, and will be replaced if and when a more appropriate term can be found.

...

APPLICATION

TEXT	EXPLANATORY NOTES
3. (1) Every child or young person commits an offence who commits an act contrary to the provisions of the Criminal Code or to the provisions of any statute set out in the Schedule.	See the notes opposite Section 2(12)
(2) Every child or young person commits a violation who commits an act contrary to any statute of the Parliament of Canada or of the Legislature of a Province that is not included in the schedule, or to any by-law of any municipality, or to any regulation or ordinance.	See the notes opposite section 2(19)
(3) Every child or young person who commits an offence or a violation shall be dealt with as hereinafter provided.	

....

PHILOSOPHY

TEXT	EXPLANATORY NOTES
4. Where a child or young person has been adjudged a violator, a child offender, or a young offender, as the case may be, he shall be dealt with not in a punitive manner, but as a child or young person requiring help and guidance and proper supervision.	This provision has been adapted from section 3(2) of the present Juvenile Delinquents Act, which reads: "Where a child is adjudged to have committed a delinquency he shall be dealt with, not as an offender, but as one in a condition of delinquency and therefore requiring help and guidance and proper supervision." The gist of this section is very much that of the one that follows, and may be redundant.

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CONSTRUCTION

TEXT	EXPLANATORY NOTES
5. (1) This Act shall be liberally construed to the end that its purpose may be carried out, namely, that the care and custody and discipline of a child or young person adjudged to be a violator, a child offender or a young offender shall approximate as nearly as may be that which should be given by its parents, and that, as far as practicable, every such child or young person shall be treated not as a criminal, but as a misdirected and misguided child, and one needing aid, encouragement, help and assistance.	This provision is a slight modification of section 38 of the present Juvenile Delinquents Act, which is: "This Act shall be liberally construed to the end that its purpose may be carried out, namely, that the care and custody and discipline, of a juvenile delinquent shall approximate as nearly as may be that which should be given by its parents, and that as far as practicable every juvenile delinquent shall be treated, not as a criminal, but as a misdirected and misguided child, and one needing aid, encouragement, help and assistance. 1929, c.46, s. 38." It is implied in the Report that this section should be retained. In paragraph 191, the Committee stated: "We agree with the philosophy expressed in section 38 of the Act. The difficulty has not been in the basic philosophy of the Act but in the failure of society to give to the juvenile court adequate resources with which to fulfill the aims of that philosophy."
(2) Where the provisions of this Act are inconsistent with the provisions of any other Act of the Parliament of Canada, the provisions of this Act shall prevail.	

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LIMITATION PERIOD

TEXT	EXPLANATORY NOTES
6. (1) No general provisions providing a time limit for making a complaint or laying an information in respect of offences punishable on summary conviction shall apply to any proceedings under this Act against a child or young person.	Present section 5(1) of the Juvenile Delinquents Act re-drafted. The Committee made no recommendation on this point. The time limit concerning the proceedings against adults will be dealt with in the Part of the Act concerning adults.
(2) The provisions of the Criminal Code prescribing a time limit for the commencement of prosecution for indictable offences apply, *mutatis mutandis*, to proceedings under this Act.	Present section 5(2) of the Juvenile Delinquents Act. The relevant offences are: 157 corrupting children 184 procuring 156 householder permitting defilement 155 parent or guardian procuring defilement 145 (1)(b) illicit sexual intercourse with female employee 144 seduction under promise of marriage.

JURISDICTION

TEXT	EXPLANATORY NOTES
GENERAL	
7. (1) Subject to sections 52 and 53, a court or judge has exclusive jurisdiction in proceedings concerning any offence or violation alleged to have been committed by any child or young person, including cases where, after the alleged offence or violation was committed, the young person has passed the age of 17 years.	This section is intended to cover the subject matter of section 4 in the present Juvenile Delinquents Act. Examples of similar provisions in American Statutes are: Standard Juvenile Court Act (model Act) section 8; Oregon 419.476.
(2) Notwithstanding any provision in this Act, the juvenile court has no jurisdiction over any person 21 years of age or more, and has no jurisdiction to make an order affecting any person beyond his twenty-first birthday.	The last part of this provision is in accordance with recommendation 27 and paragraph 186 of the Report. Recommendation 27 states: "In no case should the juvenile court have the power to make an order affecting a young person beyond his twenty-first birthday."
VENUE	
8. Except where otherwise provided in this Act, the venue for proceedings under this Act shall be in the court having territorial jurisdiction where the child or young person is found, or his place of residence, or where the alleged offence or violation occurred.	There is no provision concerning venue in the present Juvenile Delinquents Act. There are sections similar to this in the American legislation examined: for example, Minnesota 260.121; Illinois 2-6(1). Section 414(a) of the Criminal Code was looked at in drafting this section.

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JURISDICTION

TEXT	EXPLANATORY NOTES
WAIVER TO JUVENILE COURT FROM A SUMMARY CONVICTION COURT 9. Where a person who is over the age of sixteen years but under the age of eighteen years is before a summary conviction court pursuant to Part XXIV of the Criminal Code, such court may, on its own motion, or on application by the Crown, at any time before sentence, order such person to be taken before the juvenile court, if it appears to such court that, having regard to the character of the person and the circumstances surrounding the commission of the offence, such order is for the good of the person and the interest of the community.	This section is intended to implement recommendation 22. It contemplates a referral from an ordinary court to a juvenile court in cases where young adults slightly over the age limit (seventeen years of age) are charged with "less serious offences". Recommendation 22 refers to "appropriate cases" without suggesting any criterion. Actually, the recommendation is to adopt "some such procedure as a means of achieving more flexibility in dealing with offenders who are only slightly over the juvenile age otherwise provided by law." Paragraph 179 of the Report notes two recommendations: 1) "that legal provision should be made to permit the judge or magistrate who is trying an offender between the ages of sixteen and eighteen, if he considers the accused to be a young person who might to his advantage be dealt with in the juvenile court, to deal with him according to the powers conferred under the provisions of the Juvenile Delinquents Act". (The Archambault Commission 1938).

....

JURISDICTION

TEXT

9. (Cont'd)

EXPLANATORY NOTES

2) "that a magistrate be given the power to remit a case to the juvenile court where the offence falls within a class consisting of certain less serious offences and where the accused has no previous convictions, and further, that the magistrate be empowered, in his discretion, to remit the case only on application by the Crown which application must be made after arraignment and before plea".

(Ontario Magistrates' Association, 1962)

The Committee did not indicate which of the approaches it favoured, stating as follows:

"We content ourselves with recommending that the proposals of the Archambault Commission and of the Ontario Magistrates' Association Committee be studied with a view to adopting one, or perhaps even both, as a means of securing more flexibility in dealing with offenders of the age of seventeen - that is, those who are the one year older than our proposed juvenile age."

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JURISDICTION

TEXT	EXPLANATORY NOTES
9. (Cont'd)	It is quite difficult to define what is per se, a "less serious offence". The criminal law distinguishes between indictable and summary conviction offences. This distinction indicates, for all practical purposes, the appreciation of Parliament of the gravity of an offence. It is felt that the offences that are punishable on summary conviction are the less serious offences referred to by the Ontario Magistrates. However, there are offences in the Criminal Code and other federal statutes that can be tried on indictment or on summary conviction. In such cases, the Crown, in its discretion, decides how the accused is to be prosecuted. The election as to the procedure applicable depends in practice on the circumstances of the offence. This section adopts the criterion of indictable versus summary conviction offences. The referral from the ordinary court to the juvenile court would apply only if the alleged offence may be punishable on summary conviction.

....

JURISDICTION

TEXT

9. (Cont'd)

EXPLANATORY NOTES

The offences are:

S. 54 assisting deserter

56 resisting execution of process

57 offences to R.C.M.P.

67 unlawful assembly

81 prize fight

84 concealed weapon

85(2) possession of silencers for firearms

86 pointing firearm

87 offensive weapon at public meeting

88(2)(3)-89-90-91 firearms

111 personating peace officer

123 advertising reward

158 indecent acts

159 nudity

160 causing disturbance

161(2)(3) disturbing religious worship

162 trespassing at night

163 offensive volatile substance

164 vagrancy

175 obstructing executing of warrant

176(2) found in

183 transporting to bawdy-houses

213 attempt to commit suicide

226 smoke screen on vehicle

239(1) venereal disease

307 fraudulently obtaining food and lodging

308 witchcraft

315(2) indecent phone calls

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JURISDICTION

TEXT	EXPLANATORY NOTES
9. (Cont'd)	341 false employment record
	344 false billing
	347 personation at examination
	356 falsely claiming royal warrant
	362 unlawful use of military uniforms
	366 intimidation
	367 employer refusing to employ member of union
	369 issuing trade stamps
	373 mischief where damage not over $50.00
	378 false firealarm
	379(2) interfering with saving of wreck
	380(1) interfering with marine signal
	383 interfering with boundary lines
	386 cruelty to animals
	387 cruelty to animals
	388 keeping cock-pit
	389 transportation of cattle
	390(2) obstructing search of vessel
	397 fraudulent use of slugs
	399 defacing current coin
	400(2) printing likeness of bank-note
	Some offences may be prosecuted either by indictment or summary conviction.
	These offences are:
	154 obscenity
	186(3) non-support
	221(1) criminal negligence

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JURISDICTION

TEXT	EXPLANATORY NOTES
9. (Cont'd)	221(2) hit and run 221(4) dangerous driving 222 driving while intoxicated 223 impaired driving 225(3) driving while disqualified 226A dangerous operation of vessels 231(1) common assault 360(2) transactions public stores 316(1)(b)(c) threats 350 to 354 incl. trade mark offence 358 secreting wreck 363 military stores 365 breach of contract In such cases, it is incumbent upon the prosecutor to determine whether the offence shall be prosecuted by way of indictment or by way of summary conviction. Where the Crown does not determine the applicable mode of prosecution, the magistrate does. In these offences, the Crown would thus have a discretion whereby it could prevent the young adult from being referred to the juvenile court by merely choosing to prosecute him by way of indictment. Where the Crown elects to proceed by way of summary conviction or where the offence is only a summary conviction offence, the referral is up to the summary conviction court, either proprio motu or on application by the Crown.

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JURISDICTION

TEXT

9. (Cont'd)

EXPLANATORY NOTES

The proposed section gives the summary conviction court the power to make an order of referral at any time before sentence. This provision is at variance with the proposal of the Ontario Magistrates Association. It is thought that the summary conviction court should be given the opportunity to make such order with full knowledge of the circumstances of the case. Under this provision, the summary conviction court may have commenced trial and realize sometime during the trial that the case is fit for a juvenile court. It would then, considering the good of the child and the interest of the community, be in a position to make such order. This provision is in accordance with the proposal of the Archambault Commission.

It is to be noted that this section does not comply with the Ontario Magistrates' recommendation in two other respects.

(1) The discretionary power of the court is not restricted to an application by the Crown. Indeed, the Crown may, as noted above, exercise its discretion and proceed by indictment, where there is an alternative mode of trial for the offences listed above. ....

JURISDICTION

TEXT

9. (Cont'd)

EXPLANATORY NOTES

(2) There is no direction concerning the absence of previous convictions. Such a direction exists in present section 638 of the Criminal Code. It has been so much criticized that its repeal is now under consideration. Furthermore, it would appear that the inquiry that the summary conviction court may conduct as to the character of the accused should inform him as to the advisability of a referral order.

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TEXT	JURISDICTION	EXPLANATORY NOTES

SECTION 421(3) OF THE CRIMINAL CODE

10. (1) Where the judge has adjudged the information to have been proved against a child or young person and such child or young person signifies in writing before the judge his intention to admit the facts concerning an offence or violation that he is alleged to have committed in Canada outside the province in which he is brought before that judge, if the offence is not an offence mentioned in sub-section (2) of section 413 of the Criminal Code, and the Attorney General or Deputy Attorney General of the province where the offence or violation is alleged to have been committed consents, the judge has jurisdiction to make an adjudication with respect to the alleged offence or violation, and to make any disposition provided for in this Act that he deems appropriate.

This sub-section is adapted from section 421(3) of the Criminal Code. Recommendation 68 of the Report states that the principle of section 421 of the Criminal Code should apply in relation to juveniles. See also paragraph 293 of the Report. The offence or violation referred to could be an offence or violation against a provincial statute. The effect of this provision would be that a court in one province would have jurisdiction to make an adjudication concerning an offence or violation against a statute of another province. Of course there would be no such jurisdiction without the consent of the Attorney General or Deputy Attorney General of the other province.

....

JURISDICTION

TEXT	EXPLANATORY NOTES
SECTION 421 A OF THE CRIMINAL CODE	
10. (2) Where the judge has adjudged the information to have been proved against a child or young person, and such child or young person signifies in writing before that judge his intention to admit the facts concerning an offence or violation he is alleged to have committed in some other place in the province in which he is brought before that judge, if the offence which he is alleged to have committed is not an offence mentioned in sub-section (2) of section 413 of the Criminal Code, the judge has jurisdiction to make an adjudication with respect to the alleged offence or violation, and to make any disposition provided for in this Act that he deems appropriate.	This sub-section is adapted from section 421A of the Criminal Code. While the Report makes no mention of this section, presumably the same principle applies as to section 421(3).

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JURISDICTION

TEXT	EXPLANATORY NOTES
10. (3) No writing that is executed by a child or young person pursuant to sub-section (1) or sub-section (2) is admissible in evidence against him in any criminal proceedings.	This sub-section is copied from sections 421(4), and 421A(2) of the Criminal Code. Section 421(3) and 421A(1) are "special jurisdiction" provisions of the Criminal Code that have been specifically adapted to this Act. Other "special jurisdiction" provisions, such as section 419 (offences committed on water, during journeys, on aircraft, etc.), section 420 (offences committed on territorial waters), 421(1) (offences committed entirely within one province), 421(2) (libel in a newspaper), 422 (offences committed in territorial divisions), 423 (offences committed not in a province) have not been adapted to, and included in, this Act. It is thought that they can be referred to as they are, and do not need to be specifically adapted to this Act. It is submitted that, by virtue of Section 27 of the new Interpretation Act, (Section 28 of the old Interpretation Act) they would be made to apply to any offence against the laws of Canada.

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POWER OF JUDGE AND COURT

TEXT	EXPLANATORY NOTES
11. Every judge in the exercise of his jurisdiction under this Act has all the powers of a magistrate.	Present Section 6(1). The juvenile court judge is hereby given the authority of two or more justices of the peace. Sections 2(22) and 425 of the Criminal Code. Sub-sections (2) and (3) of present section 6 are omitted in this Act. Sub-section (2) gives the juvenile court judge all the powers and duties, with respect to juvenile offenders, vested in, or imposed on a judge, stipendiary magistrate, justice or justices, by or under the Prisons and Reformatories Act. Sub-section(3)safeguards the discretion of the juvenile court judge as to the term for which he may commit a juvenile delinquent. While some provisions of the Prisons and Reformatories Act conflict or duplicate the provisions of the proposed Act (for example, sections 26, 27, 28), it is submitted that no specific reference to the Prisons and Reformatories Act should be necessary, in view of the fact that the proposed Act purports to deal fully and comprehensively with the time and place of detention of offenders, and in view of section 5(2) of this Act.

....

POWERS OF JUDGE AND COURT

TEXT	EXPLANATORY NOTES
11. (Cont'd)	The powers of the juvenile court judge need not be supplemented by the Prisons and Reformatories Act. Of course, the Prisons and Reformatories Act will continue to apply to young offenders referred to the ordinary courts for both trial and sentence.

POWERS OF JUDGE AND COURT

TEXT

12. Every judge has the same power and authority to preserve order in a court over which he presides as may be exercised by the superior court of criminal jurisdiction of the province during the sittings thereof.

EXPLANATORY NOTES

Present section 36(1) of the Juvenile Delinquents Act gives the juvenile court the same powers and authority to preserve order in court as are exercised by any court in Canada. Although the present wording has apparently created no difficulty, the proposed section departs from it, adopting instead the wording of section 426 of the Criminal Code, which was discussed in Re Hawkins, 1965, 53 W.W.R. 406, where it was held by Branca, J., of the Supreme Court of B.C. (in chambers) that section 426 gives a magistrate, who is not a court of record, statutory authority to punish for contempt of court committed in facie. Where the provincial law creating a juvenile court declares such court to be a court of record, the proposed section adds nothing to the inherent power which such court already possesses to deal with contempt in facie. On the other hand, the proposed section is useful in cases where a magistrate acts as persona designata - since such magistrate does not then constitute a court of record.

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POWERS OF JUDGE AND COURT

TEXT	EXPLANATORY NOTES
13. (1) A court may make rules of court not inconsistent with this Act or any other Act of the Parliament of Canada concerning matters that fall within the ambit of this Act.	Recommendation 52, paragraph 272. This section is adapted from section 424 of the Criminal Code.

(2) Rules under sub-section (1) may be made

(a) generally to regulate the duties of the officers of the court and any other matter considered expedient to attain the ends of justice and carry into effect the provisions of the law;

(b) to regulate the practice and procedure in the court;

(c) to formulate policy directives concerning intake, detention, case selection, adjustment, or any other matter which the court deems expedient to regulate.

(3) No rule under this section shall be in force or valid in a Province or territorial division thereof unless approved by the Attorney General of the Province.

....

POWERS OF JUDGE AND COURT

TEXT	EXPLANATORY NOTES
14. Every judge may enforce the due execution of a lawful process or order issued by him under this Act by the means provided by the law for enforcing the execution of the process of other courts in like cases.	Present section 36(2) of the Juvenile Delinquents Act slightly modified.
15. (1) The clerk of a court has power ex officio to administer oaths.	Present section 11(1).
(2) The clerk of a court has power, in the absence of a judge, to adjourn any hearing for a definite period not to exceed ten days, except where a child or young person is being held in detention otherwise than by order of a judge consequent to a detention hearing.	The 10 day period is adopted from section 11(1) of the present Act. It is arbitrary and could be changed.
(3) Where a child or young person is brought before the Court, it is the duty of the clerk of such court to send, or cause to be served, under the supervision of a judge, all notices as may be required by this Act, and also to notify the probation officer or chief probation officer in advance where any child is to appear before the court for any hearing under this Act.	Present section 11(2) modified by providing, in addition to the duty concerning notice to a probation officer, the duty concerning all notices required by the Act.

....

POWERS OF JUDGE AND COURT

TEXT	EXPLANATORY NOTES
16. (1) Where an adjudicatory hearing is commenced by a judge and such judge dies, or is, for any reason, unable to continue the hearing, another judge for the same territorial division may act in the place of the judge before whom the hearing was commenced.	This section is adapted from section 698 of the Criminal Code.
(2) A judge who, pursuant to sub-section (1), acts in the place of a judge before whom an adjudicatory hearing has been commenced (a) shall, if, pursuant to sub-section (1) of section 56, an adjudication has been made, proceed with the case in the manner provided by section 57, or, (b) shall, if no adjudication has been made pursuant to sub-section (1) of section 56, commence the adjudicatory hearing again.	
(3) Where a probation order is made concerning a child offender, a young offender or a violator by a judge who thereafter dies or is, for any reason, unable to act, another judge for the same territorial jurisdiction may make an order under section 63, section 64 or section 65, as the case may be.	

...

POWERS OF JUDGE AND COURT

TEXT	EXPLANATORY NOTES
17. Under no circumstances under this Act can a court or a judge order costs to be paid by a child or young person.	This provision is intended to implement the principle set out in recommendation 70, and in paragraph 296. Present section 22(1) of the Juvenile Delinquents Act implies that such an order is possible. This section is included here in order to make sure that the principle is not forgotten. If the Act is self-contained, no mention of it would be necessary; it would suffice not to give the court the power to order costs. Alternatively, should it be desirable to impress the principle on the judges, this section should be included under the disposition part of the Act.

....

TEXT	PROCEDURE	EXPLANATORY NOTES

ARREST

18. (1) Anyone who arrests a child or young person without a warrant shall forthwith deliver that child or young person to a peace officer and the peace officer shall deal with such child or young person in the manner hereinafter provided.

This provision is adapted from section 438(1) of the Criminal Code. In paragraph 211, the Committee, referring to section 438(2) of the Criminal Code, recommended that a similar provision be made in this Act. This specific point was not dealt with expressly by the Committee. It is suggested that, for the sake of completeness, it might be useful, since anyone may arrest without warrant a person whom he finds committing an indictable offence (434) . . or whom he believes on reasonable and probable grounds has committed a criminal offence and is escaping or pursued. (436). It could be questioned whether such power of arrest should extend to children and young offenders. It is submitted that such power should be maintained under the Act.

Indeed, a child or a young person found committing a theft, assault, etc., should be liable to immediate arrest by anybody.

...

TEXT	PROCEDURE	EXPLANATORY NOTES

ARREST

18. (2) A peace officer who receives delivery of and detains a child or young person who has been arrested without a warrant, or who arrests a child or young person with or without a warrant shall, without delay, take or cause to be taken such child or young person before the juvenile court.

This is adapted from section 438(2) of the Criminal Code and complies with the principle of present section 8(1), which requires all cases to go to the juvenile court. The purpose of this sub-section is two-fold:

1) to provide for prompt production of the child or young person before the court; 2) to provide that such production shall be made to the juvenile court. As noted above, it combines the principles set out in section 438(2) of the Criminal Code and in section 8(1) of the present Juvenile Delinquents Act, respectively. Should the expression "without delay" be too demanding on the police, the word "undue" could be added. Recommendation 37 states that the law should make it clear that there is an obligation on the authorities to bring promptly before the court young persons who are being dealt with under federal legislation relating to juveniles.

....

PROCEDURE

TEXT	EXPLANATORY NOTES
19. A police officer shall bring to the attention of the court or judge every child or young person whom he believes on reasonable and probable grounds has committed an offence.	This section is intended to implement the principle set out in paragraph 197(1) of the Report. It is one of the principles stated by the Committee as a means of avoiding the "dangers of arbitrariness and lack of harmony between the goal sought by the legislator and the practices followed in administering the law". (Recommendation 32) At page 12 of the Report of the Couchiching Conference on Justice and the Juvenile, April 16-18, 1967, appears the following comment: "It was felt that Section (1) of Paragraph 197 of the Report was completely unworkable from an administrative point of view as well as being unnecessary". The principle is included in this discussion draft for the purpose of focusing attention on the issue.

...

TEXT	PROCEDURE	EXPLANATORY NOTES

INFORMATION

20. (1) A judge may receive an information from anyone who, upon reasonable and probable grounds, believes that a child or young person has committed an offence or a violation, and he may issue, where he considers that a case for so doing is made out, a summons or warrant to compel the child or young person to attend before the juvenile court.

TEXT	PROCEDURE	EXPLANATORY NOTES
INFORMATION		
20. (2) A judge has exclusive jurisdiction to receive an information under this section.		There is no recommendation concerning the subject matter of this subsection. Present section 8(1) indicates the court before which the child must be taken, without mentioning what court may issue a summons or a warrant. If the juvenile court is to perform a useful screening function, it should have exclusive jurisdiction over the laying of informations against juveniles. This is a mere extension of the principle of present section 8(1), which requires that all cases where a child is arrested with or without a warrant be taken before the juvenile court. Present section 8(1) states further that if a child is taken before a justice upon a summons or under a warrant, or for any other reason, it is the duty of the justice to transfer the case to the juvenile court. Impliedly, the justice has, under present section 8(1), the power to issue a summons or warrant. Under the proposed section, the justice has no jurisdiction to receive an information. In other words, he has to refer to the juvenile court the persons seeking to lay an information. This exclusive power of the juvenile court is necessary in view of the recommended

....

TEXT	PROCEDURE	EXPLANATORY NOTES

INFORMATION

20. (2) (Cont'd)

provisions concerning informal adjustment, in cases where, after a preliminary conference, it would appear that the laying of an information is not necessary. (See paragraph 267).

(3) An information laid under this section shall allege that the child or young person has committed anywhere an offence or a violation that may be dealt with in the province where the juvenile court judge has jurisdiction, and that the child or young person

(a) is or is believed to be, or

(b) resides or is believed to reside,

within the territorial jurisdiction of the judge.

Recommendation 53, and paragraph 258 call for a standard form of information. This sub-section is adapted from section 439 of the Criminal Code.

(4) An information that is laid under this section may be in Form 2...

...

PROCEDURE

TEXT	EXPLANATORY NOTES
SUMMONS TO CHILD OR YOUNG PERSON	
Contents	
21. (1) A summons shall	Adapted from section 441(1) of the Criminal Code.
(a) be directed to the child or young person;	
(b) set out briefly the offence or violation in respect of which an information is laid against that child or young person;	
(c) require the child or young person to appear at a time and place to be stated therein, and	
(d) state clearly that the child or young person to whom the summons is directed has the right to be represented by counsel.	
(2) A summons may be in Form 3.	

...

PROCEDURE

TEXT	EXPLANATORY NOTES
SUMMONS TO CHILD OR YOUNG PERSON Service by Mail	
21. (3) A summons directed to a child or young person may be sent by mail to that child or young person.	Service by mail is not provided for in section 441 of the Criminal Code; however, this is now done in at least some juvenile courts. To require personal service in the first instance would put the courts to expense and trouble. It would probably create a personnel problem immediately, as some courts might not be able to cope with the extra work. The principle of service by mail should be discussed.

PROCEDURE

TEXT	EXPLANATORY NOTES
SUMMONS TO CHILD OR YOUNG PERSON Personal Service	
21. (4) If a child or young person to whom a summons has been mailed does not appear at the time and place stipulated in the summons mailed to him, a second summons may be issued by the judge, which shall be served by a peace officer or other person designated by the judge, who shall deliver it personally to the child or young person to whom it is directed, or, if that child or young person cannot conveniently be found, shall leave it for him at his last or usual place of abode with some inmate thereof who appears to be at least seventeen years of age.	This provision for personal service is adapted from section 441(3) of the Criminal Code. In the Criminal Code, service is to be carried out by a peace officer. In this draft, "or other person designated by the judge" has been added, since some courts have service made by their own employees.

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PROCEDURE

TEXT	EXPLANATORY NOTES
WARRANT	
22. (1) A warrant shall (a) name or describe the child or young person; (b) set out briefly the offence or violation in respect of which an information is made against that child or young person; and (c) order that the child or young person be arrested and brought before the judge who issued the warrant, or another judge for the same territorial jurisdiction, to be dealt with by such judge.	This provision is adapted from section 442(1) of the Criminal Code.
(2) A warrant remains in force until it is executed, and need not be made returnable at any particular time.	Adapted from Section 442(2) of the Criminal Code.
(3) A warrant that is authorized in this Act shall be signed by the judge who issued it, and may be directed (a) to a peace officer by name; (b) to a peace officer by name and all other peace officers within the territorial jurisdiction of the judge; or (c) generally to all peace officers within the territorial jurisdiction of the judge.	This section is adapted from section 443 of the Criminal Code.

PROCEDURE

TEXT	EXPLANATORY NOTES
WARRANT	
23. (1) A judge may issue a warrant in Form 5. for the arrest of a child or young person, notwithstanding that a summons has already been issued to require the appearance of the child or young person.	Adapted from section 444 of the Criminal Code.
(2) Where (a) service of a summons is proved and the child or young person does not appear, or (b) it appears that a summons cannot be served because the child or young person is evading service, a judge may issue a warrant of arrest.	

...

PROCEDURE

TEXT	EXPLANATORY NOTES
EXECUTION OF WARRANT	
24. (1) A warrant may be executed by arresting the child or young person (a) wherever he is found within the territorial jurisdiction of the judge by whom the warrant was issued, or (b) wherever he is found in Canada, in the case of a fresh pursuit.	Adapted from section 445 of the Criminal Code.
(2) A warrant may be executed by a person who is (a) the peace officer named in the warrant, or (b) one of the peace officers to whom it is directed, whether or not the place in which the warrant is to be executed is within the territory for which the person is a peace officer.	

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PROCEDURE

TEXT	EXPLANATORY NOTES
ENDORSEMENT OF WARRANT	
25. (1) Where a warrant for the arrest of a child or young person cannot be executed in accordance with section 24, a judge within whose jurisdiction the child or young person is or is believed to be shall, upon application, and upon proof on oath or by affidavit of the signature of the judge who issued the warrant, authorize the execution of the warrant within his jurisdiction by making an endorsement, which may be in Form .6. , upon the warrant.	This provision is adapted from section 447 of the Criminal Code. It should cover the subject matter of section 17(3) and (4) in the present Juvenile Delinquents Act.
(2) An endorsement that is made upon a warrant pursuant to sub-section (1) is sufficient authority to the peace officer to whom it was originally directed, and to all peace officers within the territorial jurisdiction of the judge by whom it was endorsed, to execute the warrant and to take the child or young person before the judge who issued the warrant.	

....

PROCEDURE

TEXT	EXPLANATORY NOTES
NOTICE TO PARENTS	
26. (1) Where a summons directed to a child or young person has been issued by a judge, notice of such summons directed to the parent or guardian of such child or young person shall be issued by the judge who issued the summons.	Section 10 of the present Juvenile Delinquents Act is concerned with notice to parents and guardians. The first part of section 10(1) is as follows: "Due notice of the hearing of any charge of delinquency shall be served on the parent or parents or the guardian of the child,....." What constitutes a "notice" or "service" thereof is not defined; however, it was the opinion of the Supreme Court of Canada in Gerald Smith and Her Majesty the Queen /1959/ S.C.R. 638, that a letter written by a probation officer to the father of a child did not constitute such notice, even though, during telephone conversations between the probation officer and the child, the father acknowledged having received the letter.
(2) Where a child or young person is being detained pending an adjudicatory hearing, notice of such hearing, directed to the parent or guardian of such child or young person, shall be issued by the judge.	

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PROCEDURE

TEXT	EXPLANATORY NOTES
NOTICE TO PARENTS	
26. (3) The notice issued pursuant to sub-sections (1) and (2) shall	The Committee recommended that notice be the responsibility of the judge. (Paragraph 253). The Report stated that the form of notice should be specified. (Recommendation 53; also paragraph 254).
(a) be in writing;	
(b) state the name of the child or young person concerning whom an information has been received by the judge, and who is the subject of a summons issued by the judge or who is being detained pending an adjudicatory hearing;	
(c) be directed to the parent or guardian of the child or young person who is the subject of the summons issued by the judge, or who is being detained pending an adjudicatory hearing;	
(d) set out briefly the offence or violation in respect of which an information has been received concerning such child or young person;	

...

PROCEDURE

TEXT	EXPLANATORY NOTES
26. (3) (Cont'd)	
(e) require that one or both of the parents, or the guardian, appear with the child or young person named in the notice at the time and place stated therein;	"Power should also be given to the Court to order the attendance of both parents where it appears to the Court that there is a conflict between the parents of the child as to the course to be followed by the parents in relation to the child or where, in the opinion of the Court, the disposition of the Court would be likely to give rise to conflict between the parents." (Report of the Couchiching Conference, p. 26)
(f) inform the person or persons to whom it is directed that a failure to comply with the notice may constitute contempt of court;	This provision is made pursuant to recommendations 86 and 54, and paragraphs 255, 256 and 356 of the Report. Penal sanctions against parents are considered appropriate where the parents do not cooperate with the court. Section 14 of this discussion draft provides that every judge may enforce the due execution of a lawful process or order issued by him under the Act.

...

PROCEDURE

TEXT	EXPLANATORY NOTES
26. (3) (Cont'd)	
(g) have attached to it a copy of the summons concerning the child or young person with whom one or both parents, or the guardian, are required to appear, if a summons has been issued; and	
(h) state clearly that the child or young person named in the notice has the right to be represented by counsel.	Recommendation 50 and paragraph 249 are to the effect that the notice to parents and guardians should state that the child is entitled to be represented by counsel.
26. (4) A notice under this section may be in Form 7.	The Report recommends a standard form of notice. (Recommendation 53; also paragraph 254).
26. (5) In lieu of personal service in the first instance, a notice issued under this section may be sent by mail to the parent or guardian to whom it is directed.	This provision for service by mail is thought to be desirable to lessen the administrative burden on the juvenile courts.

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PROCEDURE

TEXT	EXPLANATORY NOTES
NOTICE TO PARENTS (Service	
26. (6) If the parent or guardian to whom a notice pursuant to this section has been mailed does not appear with the child or the young person named in the notice at the time and place stated therein, a second notice shall be issued by the judge, which shall be served by a peace officer or other person designated by the judge, who shall deliver it personally to the parent or guardian to whom it is directed, or, if that person cannot conveniently be found, shall leave it for him at his last or usual place of abode with some inmate thereof who appears to be at least seventeen years of age.	Adapted from 441(3) of the Criminal Code.
26. (7) Where the parent or guardian of a child or young person appears before the court with the child or young person, the judge may dispense with notice under this section.	This sub-section is intended to cover those situations where a child or young person is apprehended at night and brought before the court the next morning. In such cases, it is the practice of the police or the courts in at least some jurisdictions to give the parents notice by telephone. To require written notice in such cases would slow up the administration of justice.

....

PROCEDURE

TEXT	EXPLANATORY NOTES
NOTICE TO A FRIEND OR RELATIVE 27. (1) Where the whereabouts of the parents or guardian of a child or young person are not known, or where, in the opinion of a judge, notice to the parents or guardian requiring their attendance at court would constitute an undue hardship, the notice provided for in section 26 may be dispensed with, and the judge may, in his discretion, issue a notice of a hearing concerning a child or young person directed to a friend or relative of the child or young person, who may appear with such child or young person.	The Committee recommended that this sort of flexibility concerning notice should be written into a new Act. (Recommendation 52, and paragraph 254).

....

PROCEDURE

TEXT

EXPLANATORY NOTES

NOTICE TO A FRIEND OR RELATIVE

27. (2) The notice issued pursuant to sub-section (1) shall

(a) be in writing;

(b) state the name of the child or young person concerning whom an information has been received by the judge, and who is the subject of a summons issued by the judge, or who is being detained pending an adjudicatory hearing;

(c) be directed to a friend or relative of the child or young person who is the subject of the summons issued by the judge, or who is being detained pending an adjudicatory hearing;

(d) set out briefly the offence or violation in respect of which an information has been received concerning such child or young person;

(e) state that the friend or relative to whom the notice is directed may appear with the child or young person named in the notice at the time and place stated therein;

....

PROCEDURE

TEXT	EXPLANATORY NOTES
27. (2) (Cont'd)	
(f) have attached to it a copy of the summons concerning the child or young person with whom the friend or relative may appear, if such summons has been issued; and	
(g) state clearly that the child or young person named in the notice has the right to be represented by counsel.	
27. (3) A notice under this section may be in Form 8.	
27. (4) A notice issued under this section shall be sent by mail to the friend or relative to whom it is directed.	

....

INFORMAL ADJUSTMENT

TEXT	EXPLANATORY NOTES
INFORMAL ADJUSTMENT	
28. (1) Where, under section 20, a judge is satisfied that there is evidence or belief upon which an information could reasonably be received, he may authorize a probation officer to confer in a preliminary conference with the child or young person believed to have committed an offence or a violation, his parents, guardian, or other interested persons, concerning the advisability of laying the information, and with a view to adjusting such cases without the laying of an information.	Recommendation 58 and paragraph 269. The Committee stated that the practice of making informal adjustments, which the courts have developed without the sanction of the law, should continue within a limited degree and under precise legal control. In paragraph 268, arguments in favour of permitting informal adjustment are set out. The New York Statute is said by the Committee to be an acceptable solution to the problems presented by informal adjustment. The section here is largely inspired by section 734 of the New York Statute and by section 3-8 of the Illinois Statute. However, the Committee suggested that the law should provide that informal adjustment be permitted only (1) where the police investigation indicates clearly that an offence has been committed (2) where the substance of the complaint is admitted by the child and (3) where the express consent of the parents is obtained. In all cases, the efforts to effect informal adjustment should be limited to a period of not more than two months.

....

INFORMAL ADJUSTMENT

TEXT	EXPLANATORY NOTES
28. (1) (Cont'd)	The limitation period is implemented in subsection(6) and conditions (2) and (3) are implemented in subsection (7).
	The first condition is embodied, with modifications, in sub-section (1); it is thought that, if the judge is satisfied that an information may be received, this implies that an offence has been committed. The judge may order a preliminary conference only in cases where an information could be received: i.e., in cases where the judge is satisfied that the allegations of the person seeking to lay an information are reasonably grounded.
28. (2) Where a child or young person is detained, the holding of a preliminary conference under this section shall not have the effect of prolonging the detention of such child or young person beyond the period permitted by section 29.	

....

INFORMAL ADJUSTMENT

TEXT	EXPLANATORY NOTES
INFORMAL ADJUSTMENT	
28. (3) In no case may the probation officer prevent the laying of an information by any person who seeks to do so under this Act.	This sub-section is copied almost word for word from Section 734(b) of the New York Statute and from Section 3-8(3) of the Illinois Statute. The judge, of course, may exercise his discretion in receiving an information, under section 20. On this subject, a strong argument could be made that the court should have unrestricted power to authorize or deny the laying of an information. The point is discussed by William H. Sheridan of the Children's Bureau in Washington, in a pamphlet entitled: "Juvenile Court Intake". At pages 141 to 144, he discusses the advisability of a court's having sole discretion in permitting or denying a petition. At page 141, after questioning the advisability of a court's having the power to deny a petition in civil cases concerning adoption, etc., he goes on to say: "Delinquency cases can be considered in a different light, at least those which involve an offense which if committed by an adult would be a crime. Here the State is usually a party to the action and the role of intake might be analogous to that of the prosecutor in a criminal case.

....

INFORMAL ADJUSTMENT

TEXT

28. (3) (Cont'd)

EXPLANATORY NOTES

Policy-wise empowering the court to deny a petition in delinquency cases would also appear to be sound because it can prevent petty complaints, often motivated by revenge and animosity growing out of neighborhood differences, from cluttering up the court. These cases can usually be handled in other ways. In fact, it is generally recognized that the discretion that is and should be vested in the police in making referrals to court should eliminate such cases."

At pages 143 and 144, when discussing the New York Statute, which contains a provision similar to draft subsection (3) opposite, Mr. Sheridan questioned the provision for an absolute right to file a petition in delinquency cases. He wrote:

"It is interesting to note that the recently passed Family Court Act in New York State provides that a preliminary procedure, similar for neglect and delinquency, may be authorized by rule of court. It is not mandatory and specifically provides that the probation service 'may not prevent' any person from filing a petition.

....

INFORMAL ADJUSTMENT

TEXT

28. (3) (Cont'd)

EXPLANATORY NOTES

It permits informal adjustments to be made at intake but includes provisions designed to protect the rights of the parties in this process. For example, the period is limited to two months without leave of the judge who may extend this period an additional 30 days. It also provides that a person may not be prevented from filing a petition, nor can any person be compelled to appear at any conference, produce any papers, or visit any place. A provision is also included which provides that no statement made at a preliminary conference is admissible in an adjudicatory hearing in family court or in a proceeding in a criminal court prior to conviction. These provisions have already been made part of the rules of court. The provision for the absolute right to file a petition in delinquency cases is questionable, but the other provisions appear to be reasonable and necessary."

....

INFORMAL ADJUSTMENT

TEXT	EXPLANATORY NOTES
INFORMAL ADJUSTMENT	
28. (4) A probation officer acting under this section is not authorized to compel any person to appear at the conference, produce any papers, or visit any place.	This provision is taken from section 3-8(4) of the Illinois Statute and from section 734(d) of the New York Statute. Apart from these references, this subsection is self explanatory; to provide otherwise would give an unjustified authority to the probation officer.
28. (5) No statement made in relation to or during a preliminary conference shall be used or receivable in evidence at an adjudicatory hearing or at any trial thereafter taking place.	This sub-section is adapted from section 3-8(5) of the Illinois Statute and from section 735 of the New York Statute, as well as from section 5 of the Canada Evidence Act. This provision follows from the non-judicial character of the conference.
28. (6) Efforts at adjustment under this section shall not extend for a period of more than 2 months.	This limitation period of 2 months was recommended by the Committee in paragraph 269, and in recommendation 58.
28. (7) No adjustment shall be made under this section unless (a) the child or young person admits the substance of the complaint; and (b) the written consent of the parents or the guardian is obtained.	These two conditions precedent to an informal adjustment were recommended in paragraph 269 of the Report, and in recommendation 58. It goes without saying that, for the informal adjustment to be successful, the child or young person must cooperate, as well as the parent or the guardian.

....

INFORMAL ADJUSTMENT

TEXT	EXPLANATORY NOTES
INFORMAL ADJUSTMENT	
28. (8) Before the expiration of the period mentioned in sub-section (6), the probation officer shall report in writing to the judge, (a) the conditions of the adjustment, or (b) the fact that no suitable adjustment could be made.	There is no recommendation on this point; however, the obligation to report the conditions of the adjustment to the judge is a means of achieving "precise legal control". A negative report should not refer to the reason why the adjustment could not be worked out, because, if it did, the rights of the child to a fair trial could be negatived by the cognizance of the Court of prejudicial material.
28. (9) Where a person seeking to lay an information objects to an informal adjustment, or where a report is made pursuant to paragraph (b) of sub-section (8), the judge shall proceed in accordance with section 20.	
28. (10) No adjustment shall be made under this section where it appears that (a) the alleged offence involves risk of serious bodily harm, or (b) where the alleged offender or violator, as the case may be, has shown previous anti-social conduct, and a court appearance seems necessary or desirable.	The principles of this provision are set out in paragraph 197(2)(a) and (b) of the Report.

....

INFORMAL ADJUSTMENT

TEXT

INFORMAL ADJUSTMENT

28. (11) A record shall be maintained by the court of all cases where an adjustment has been made pursuant to this section.

EXPLANATORY NOTES

Paragraph 193(3) of the Report is as follows:

"Records should be maintained of all cases of informal disposition so that if a child is brought before the court the judge will be in a position to know about the child's prior anti-social conduct".

The principle of "informal adjustment" or "informal disposition" is now contained in section 70 of the Prisons and Reformatories Act, a provision concerning the Province of Ontario. This section makes it mandatory for a court, when dealing with an information concerning a boy under 12, or a girl under 13, to confer with the executive of the children's aid society. Subsection (2) provides for a conference such as is contemplated in section 28 of this draft. Subsection (3) provides that, when the public interest and the welfare of the child will be best served thereby, the court may dispose of the case informally, "instead of committing the child for trial or sentencing the child, as the case may be."

....

INFORMAL ADJUSTMENT

TEXT	EXPLANATORY NOTES
28. (Cont'd)	The court may then "bind" the child to a suitable person, place the child in a foster home, impose a fine not exceeding ten dollars, suspend sentence for an indefinite or definite period, or, if the child has been found guilty or is wilfully wayward and unmanageable, the court may commit the child to an industrial school, reformatory or refuge for girls.

DETENTION

TEXT

DETENTION PENDING PROCEEDINGS

29. (1) Where a child or young person is taken before the court, he shall be immediately released to the custody of his parent or guardian, unless a probation officer, or other person designated by the court, is of the opinion that the matter of detention should be referred to a judge, or the child or young person was arrested under a warrant.

EXPLANATORY NOTES

Except for the principle set out in section 30 of this draft, there is no clear recommendation in the Report on the matter of detention. The Committee dealt with detention facilities more than it did with the judicial control over detention. However, in footnote 22, at page 128, section 17 of the Standard Juvenile Court Act is cited with the apparent approval of the Committee. In view of the principles concerning detention (Recommendation 36, which is embodied in section 30 of this draft), and of the principle stated in paragraph 197(4) concerning the taking of physical custody of a child by the police, it seems that something along the lines of this section should be enacted. The purpose of this section is to provide a procedure whereby the detention of a child or young person would be investigated without delay, with a view to ordering his release, unless the circumstances indicate that the matter should be left to a judge, in which case a judge would hold a detention hearing, after notice thereof had been given to the parent of the child. (subsection 3).

....

DETENTION

TEXT	EXPLANATORY NOTES
29. (2) Unless sooner released, a child or young person shall be brought before a judge within 24 hours, excluding Sundays and holidays, for a detention hearing, to determine whether he shall be further detained.	The period provided for in subsection (2) is that which is provided in section 438 of the Criminal Code.

NOTICE TO PARENTS

29. (3) Where a child or young person is taken before the court and is not released under subsection (1), his parent or guardian shall be informed by notice in writing, stating the reason why he was not sooner released, and fixing a time and place for the detention hearing.

NOTICE TO PARENTS

29. (4) A notice pursuant to subsection (3) shall be issued in accordance with section 26, mutatis mutandis.

....

DETENTION

TEXT	EXPLANATORY NOTES
LIMITATIONS ON DETENTION	
30. No child or young person shall be detained pending an adjudicatory hearing unless	Paragraphs (a), (b) and (c) of this provision are intended to implement the principles contained in recommendation 36, and paragraph 209. The Committee took these principles as formulated by the National Probation and Parole Association (now the National Council on Crime and Delinquency), of the United States.
(a) it is almost certain that he will run away pending proceedings, or	
(b) it is almost certain that he will commit an offence dangerous to himself or to the community, or	
(c) he is a parole violator or a runaway from an institution to which he was committed by a court, or	
(d) there is no suitable place for the child or young person to go if he is released.	In the report of the Couchiching Conference on "Justice and the Juvenile", the limitations as set out in paragraphs (a), (b) and (c) were questioned as to their adequacy. The following 2 questions were asked: (at page 15) "(i) does it cover the child who does not want to return home before the court appearance? It should (ii) does it cover the case of a child that the Children's Aid Society cannot control before he or she comes to court?" Para. (d) is intended to cover these situations.

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DETENTION

TEXT	EXPLANATORY NOTES
DETENTION - NOT WITH ADULTS	
31. (1) No child or young person, pending an adjudicatory hearing, shall be detained in any county or other gaol or other place in which adults are or may be imprisoned, but shall be detained at a detention home or shelter used exclusively for children or young persons, or under other custody approved of by the judge or a duly authorized officer of the court.	This is adapted from present section 13(1).
(2) Everyone who contravenes this section is guilty of an offence punishable on summary conviction.	
(3) This section does not apply to a young person concerning whom an order has been made pursuant to paragraph (a) of subsection (1) of section 53.	This is adapted from present section 13(3).
(4) A child or young person who requires care away from his home, but who does not require physical restriction, may be given temporary care in a foster family home or other shelter facility designated by the court.	

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DETENTION

TEXT	EXPLANATORY NOTES
DETENTION - AVOIDANCE OF	
31. (5) In order to avoid detention, the promise of any trustworthy person to be responsible for the presence of the child or young person when required may be accepted.	This is adapted from present section 14(2), with a larger application. Of interest is recommendation 241, at page 268 of the Report of the Ontario Legislature's Select Committee on Youth, which is that: "No child be placed in a detention facility if it is possible to accommodate such child in either its own home, that of a responsible relative or an approved interested party." There is no mention of bail in this draft. To support the exclusion of any bail provision, reference is made to the following: Recommendation 243, at page 268 of the Report of the Ontario Legislature's Select Committee on Youth states that: "Bail should not be a consideration where juveniles are concerned. A child either should or should not be in a detention facility. Money should not be a criterion of custody for children." The principle that money is irrelevant when considering whether or not an accused should be in custody is supported and discussed by Professor M.L. Friedland in a pamphlet entitled: "Reforming the Bail System" from an

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DETENTION

TEXT

31. (5) (Cont'd)

EXPLANATORY NOTES

address delivered at Kingston, February 22, 1966, to the John Howard Society of Kingston. See especially pages 7, 8 and 9.

The report of the Legislative Council (1955) concerning the Wisconsin Children's Code was adamant in its opposition to the use of bail, and quoted, with approval, from the Standard Juvenile Court Act. At page 41 of the current (1959) edition of the Standard Juvenile Court Act appears the following comment:

"The decision whether to hold a child in detention or to release him should not depend on the availability of a bail bond. Accordingly, provisions regarding bail for adult offenders are not applicable to children within the jurisdiction of the court. This assumes, however, proper detention facilities and procedures. In certain situations, referred to in the section, bail should be allowed. In such cases, of course, the child continues within the jurisdiction of the court."

Section 17.6 is referred to; and is as follows:

"Provisions regarding bail shall not be applicable to children detained in accordance with the provisions of this Act, except that bail may be

....

TEXT	EXPLANATORY NOTES
31. (5) (Cont'd)	allowed when a child who should not be detained lives outside the territorial jurisdiction of the court." At page 487 of an article entitled "The California Juvenile Court", contained in the Stanford Law Review, May 1958, Vol. 10, No. 3, appears the following statement: "Release pending hearing should depend not upon financial ability to post a bond but upon the juvenile court's decision as to whether a youth should be detained pending a formal hearing. Indiscriminate use of bail might deprive a seriously disturbed youth of needed medical care and might aggravate his problems by returning him to an environment which caused his troubles. For these reasons it is recommended that section 828 of the Welfare Code, authorizing bail at the trial judge's discretion, be repealed."
31. (6) This section does not apply to a child apparently over the age of fourteen years who, in the opinion of the judge, or, in his absence, of the sheriff, or, in the absence of both the judge and the sheriff, of the mayor or other chief magistrate of the city, town, county or place, cannot safely be confined in any place other than a gaol or lock-up.	Present section 13(4) of the Juvenile Delinquents Act.

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PROCEDURE AT HEARING

TEXT	EXPLANATORY NOTES
32. (1) No hearing under this Act shall be held unless an information has been received in Form 2. by a judge of a juvenile court.	695(1) of the Criminal Code adapted. Sections 32-44 of this draft are adaptations from the Criminal Code. Alternatively, a reference section such as section 5(1) of the present Juvenile Delinquents Act could provide that prosecutions and trials under this Act would be governed by the provisions of the Criminal Code relating to summary convictions, except when in conflict with specific provisions of this Act.
32. (2) Nothing in this Act or any other law shall be deemed to require a judge before whom an adjudicatory hearing is held to be the judge by whom the information has been received or the detention hearing was held.	697(1) of the Criminal Code adapted.

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PROCEDURE AT HEARING

TEXT	EXPLANATORY NOTES
INFORMATION	
33. In proceedings to which this Part applies, the information	Section 696(1) of the Criminal Code, adapted.
(a) shall be in writing and under oath, and	
(b) may charge more than one offence or violation, or may charge offences and violations, but where more than one offence or violation is charged, each offence or violation shall be set out in a separate count.	

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PROCEDURE AT HEARING

TEXT	EXPLANATORY NOTES
COUNTS IN AN INFORMATION	
34. (1) Each count in an information shall in general apply to a single transaction and shall contain and is sufficient if it contains in substance a statement that the child or young person committed an offence or a violation therein specified.	Sections 492 and 701(1) of the Criminal Code.
(2) The statement referred to in subsection (1) may be	
(a) in popular language without technical averments or allegations of matters that are not essential to be proved;	
(b) in the words of the enactment that describes the offence or violation;	
(c) in words that are sufficient to give the alleged offender or violator notice of the offence or violation with which he is charged.	

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PROCEDURE OF HEARING

TEXT	EXPLANATORY NOTES
34. (3) A count shall contain sufficient detail of the circumstances of the alleged offence or violation to give to the alleged offender or violator reasonable information with respect to the transaction and to identify the same, but otherwise the absence or insufficiency of details does not vitiate the count.	
(4) A count may refer to any section, subsection, paragraph or sub-paragraph of the enactment that creates, according to this Act, the offence or violation, and for the purpose of determining whether a count is sufficient, consideration shall be given to any such reference.	492(5) of the Criminal Code.

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PROCEDURE AT HEARING

TEXT	EXPLANATORY NOTES
SUFFICIENCY OF COUNTS	
35. No count in an information is insufficient by reason of the absence of details where, in the opinion of the court, the count otherwise fulfils the requirements of section 34 and, without restricting the application of the foregoing, no count in an information is insufficient by reason only that	Section 493, Criminal Code.
(a) it does not name the person injured or intended or attempted to be injured;	
(b) it does not name the person who owns or has a special property or interest in property mentioned in the count;	
(c) it charges an intent to defraud without naming or describing the person whom it was intended to defraud;	
(d) it does not set out any writing that is the subject of the charge;	
(e) it does not set out the words used where words that are alleged to have been used are the subject of the charge;	
(f) it does not specify the means by which the alleged offence was committed;	

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PROCEDURE AT HEARING

TEXT

EXPLANATORY NOTES

35. (Cont'd)

(g) it does not name or describe with precision any person, place or thing, or

(h) it does not, where the consent of a person, official or authority is required before proceedings may be instituted for an offence or violation, state that the consent has been obtained.

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PROCEDURE AT HEARING

TEXT	EXPLANATORY NOTES
PARTICULARS	
36. The court may, if it is satisfied that it is necessary for a fair hearing, order that a particular further describing any matter relevant to the proceedings be furnished to the alleged offender or violator.	Section 701(2) of the Criminal Code.
37. No exception, exemption, proviso, excuse or qualification prescribed by law is required to be set out or negatived, as the case may be, in an information.	702(1) of the Criminal Code.

PROCEDURE AT HEARING

TEXT	EXPLANATORY NOTES
DEFECTS AND OBJECTIONS	
38. (1) Any objection to an information for a defect apparent on its face shall be taken by motion to quash the information before the alleged offender or violator has pleaded, and thereafter only by leave of the juvenile court before which the adjudicatory hearing takes place.	Section 704 of the Criminal Code.
(2) A juvenile court may, upon the hearing of an information, amend the information or a particular that is furnished under section 35 to make the information or particular conform to the evidence if there appears to be variance between the evidence and (a) the allegation in the information, or (b) the allegation in the information (i) as amended, or (ii) as it would have been if amended in conformity with any particular that has been furnished pursuant to section 35.	

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PROCEDURE AT HEARING

TEXT

EXPLANATORY NOTES

DEFECTS AND OBJECTIONS

38. (3) A juvenile court may, at any stage of the adjudicatory hearing, amend the information as may be necessary if it appears

(a) that the information

(i) fails to state or states defectively anything that is requisite to constitute the offence or violation

(ii) does not negative an exception that should be negatived, or

(iii) is in any way defective in substance, and the matters to be alleged in the proposed amendment are disclosed by the evidence taken at the hearing, or

(b) that the information is in any way defective in form.

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PROCEDURE AT HEARING

TEXT

EXPLANATORY NOTES

DEFECTS AND OBJECTIONS

38. (4) A variance between the information and the evidence taken on the hearing is not material with respect to

(a) the time when the offence or violation is alleged to have been committed, if it is proved, where applicable, that the information was laid within the prescribed period of limitation, or

(b) the place where the subject matter of the proceedings is alleged to have arisen, if it is proved that it arose within the territorial jurisdiction of the juvenile court that holds the hearing.

PROCEDURE AT HEARING

TEXT	EXPLANATORY NOTES
DEFECTS AND OBJECTIONS	
38. (5) The juvenile court shall, in considering whether or not an amendment should be made, consider (a) the evidence taken on the hearing, if any, (b) the circumstances of the case, (c) whether the defendant has been misled or prejudiced in his defence by a variance, error or omission mentioned in subsection (2) or (3) and (d) whether, having regard to the merits of the case, the proposed amendment can be done without injustice being done.	
38. (6) Where in the opinion of the juvenile court the defendant has been misled or prejudiced in his defence by an error or omission in the information, the juvenile court may adjourn the hearing.	Section 704 of the Criminal Code.

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PROCEDURE AT HEARING

TEXT

EXPLANATORY NOTES

POWERS OF JUVENILE COURT AT HEARING

39. A juvenile court judge acting under this Part may

(a) adjourn the hearing from time to time and change the place of hearing, where it appears to be desirable to do so by reason of the absence of a witness, the inability of a witness who is ill to attend at the place where the justice usually sits, or for any other sufficient reason, but no such adjournment shall be for more than 8 clear days, unless the alleged offender or violator is not held in detention;

(b) issue a warrant for the arrest of an alleged offender or violator

(i) who does not appear pursuant to service of a summons upon him, if service is proved, or

(ii) who does not appear at the time and place to which a hearing has been adjourned;

(c) regulate the course of the hearing in any way that appears to him to be desirable for the proper administration of justice and that is not inconsistent with this Act.

Section 451 in part of the Criminal Code.

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PROCEDURE AT HEARING

TEXT	EXPLANATORY NOTES
TAKING EVIDENCE OF WITNESSES	
40. (1) When the alleged offender or violator is before a juvenile court holding an adjudicatory hearing, the juvenile court shall	Section 453 of the Criminal Code - adapted.
(a) hear each witness called on the part of the prosecution or of the defendant and who testifies under oath to any matter relevant to the hearing;	
(b) allow cross-examination of the witnesses;	
(c) cause a record of the evidence of each witness to be taken	
(i) by a stenographer appointed by him, or in legible writing, in the form of a deposition in Form .10. or,	
(ii) in a province where a sound recording apparatus is authorized by or under provincial legislation for use in civil cases, by the type of apparatus so authorized and in accordance with the requirements of the provincial legislation.	

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PROCEDURE AT HEARING

TEXT

EXPLANATORY NOTES

TAKING EVIDENCE OF WITNESSES

40. (2) Where a deposition is taken down in writing, the juvenile court judge shall, in the presence of the defendant before asking the defendant if he wishes to call witnesses,

(a) cause the deposition to be read to the witness,

(b) cause the deposition to be signed by the witness, and

(c) sign the deposition himself.

40. (3) Where the depositions are taken down in writing the justice may sign

(a) at the end of each deposition, or

(b) at the end of several or of all the depositions in a manner that will indicate that his signature is intended to authenticate each deposition.

40. (4) Where the stenographer appointed to take down the evidence is not a duly sworn court stenographer, he shall make oath that he will truly and faithfully report the evidence.

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PROCEDURE AT HEARING

TEXT

EXPLANATORY NOTES

TAKING EVIDENCE OF WITNESSES

40. (5) Where the evidence is taken down by a stenographer appointed by the juvenile court judge, it need not be read to or signed by the witnesses, and, where the judge, prosecutor or defendant so request, the evidence shall be transcribed by the stenographer and the transcript shall be accompanied by

(a) an affidavit of the stenographer that it is a true report of the evidence, or

(b) a certificate that it is a true report of the evidence if the stenographer is a duly sworn court stenographer.

40. (6) Where, in accordance with this Act, a record is taken in any proceedings under this Act by a sound recording apparatus, the record so taken shall be dealt with and transcribed, and the transcription certified and used in accordance with the provincial legislation mutatis mutandis mentioned in subsection (1).

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PROCEDURE AT HEARING

TEXT	EXPLANATORY NOTES
WITNESS REFUSING TO ANSWER	
41. (1) Where a person, being present at a hearing pursuant to this Act and being required by the judge of the juvenile court to give evidence (a) refuses to be sworn, (b) having been sworn, refuses to answer the questions that are put to him, (c) fails to produce any writings that he is required to produce, or (d) refuses to sign his deposition, without offering a reasonable excuse for his failure or refusal, the judge may, except in the case of a detention hearing, adjourn the hearing and may, in any case, by warrant in Form 11, commit the person to prison for a period not exceeding eight clear days or for the period during which the inquiry is adjourned, whichever is the lesser period.	Section 457 of the Criminal Code.

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PROCEDURE AT HEARING

TEXT

EXPLANATORY NOTES

WITNESS REFUSING TO ANSWER

41. (2) Where a person to whom sub-section (1) applies is brought before the judge of the juvenile court upon the resumption of the adjourned hearing and again refuses to do what is required from him, the judge may again adjourn the hearing for a period not exceeding eight clear days and commit him to prison for the period of adjournment or any part thereof, and may adjourn the hearing and commit the person to prison from time to time until the person consents to do what is required of him.

41. (3) Nothing in this section shall be deemed to prevent the judge of the juvenile court from making an adjudication upon any other sufficient evidence taken by him.

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PROCEDURE AT HEARING

TEXT	EXPLANATORY NOTES
ABSCONDING WITNESS	
42. (1) A person who, being required by law to attend or remain in attendance for the purpose of giving evidence, fails, without lawful excuse, to attend or remain in attendance accordingly is guilty of contempt of court.	Section 612, Criminal Code.
42. (2) A judge of a juvenile court may deal summarily with a person who is guilty of contempt of court under this section and that person is liable to a fine of one hundred dollars or to imprisonment for ninety days or to both, and may be ordered to pay the costs that are incident to the service of any process under this part and to his detention, if any.	
42. (3) A conviction under this section may be in Form 12 and a warrant of committal in respect of a conviction under this section may be in Form 13.	

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PROCEDURE AT HEARING

TEXT	EXPLANATORY NOTES
NON-APPEARANCE OF PROSECUTOR	
43. Where the defendant appears for an adjudicatory hearing, and the prosecutor, having had due notice, does not appear, the court may dismiss the information, or may adjourn the hearing to some other time upon such terms as it considers proper.	Section 706, Criminal Code. "Defendant" is defined to include a child or young person concerning whom an information has been received.

PROCEDURE AT HEARING

TEXT	EXPLANATORY NOTES
44. (1) Where the prosecutor and defendant appear, the court shall proceed to hold an adjudicatory hearing.	Section 707(1) of the Criminal Code.
44. (2) The defendant shall appear personally, and the court may, if it thinks fit, issue a warrant in Form 4 for the arrest of the defendant, and adjourn the hearing to await his appearance thereto.	Section 707(2), modified to make defendant's appearance mandatory.

PROCEDURE AT HEARING

TEXT	EXPLANATORY NOTES
45. (1) Where the defendant appears, the court shall (a) explain to him the substance of the information in simple language suitable to his age and understanding, and, (b) inform him that, if he so desires, he may admit the facts of the information.	In paragraph 261 appears the following comment: "We recommend that the law be clarified in regard to both the plea procedure and the privilege against self-incrimination". Paragraph (a) is taken from Rule 6 of the Summary Jurisdiction (Children and Young Persons) Rules 1933, at page 366 of Clarke Hall and Morrison on Children, 7th edition. The U.K. Rules of Court were cited with approval by the Committee.
45. (2) No defendant shall be adjudged to be an offender or a violator upon an admission made pursuant to this section, unless such admission is corroborated to the satisfaction of the court by independant and admissible evidence.	Paragraph 261: "The juvenile's admission should serve not as a legal basis for the subsequent proceedings but only as a guide as to how the further course of the trial might best be arranged. The hearing on further evidence should not be regarded as unnecessary merely because of 'an admission of the charge'." (Quoted by the Committee from remarks made by Professor Mannheim of England).

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PROCEDURE AT HEARING

TEXT	EXPLANATORY NOTES
45. (3) Where the defendant does not make an admission pursuant to this section, the court shall proceed with the adjudicatory hearing and shall take the evidence of witnesses for the prosecution and the defendant in accordance with the provisions of Part XV of the Criminal Code relating to preliminary inquiries.	This section, providing a general reference to the specific provisions of the Criminal Code, is an alternative to the specific provisions provided elsewhere in this draft.

PROCEDURE AT HEARING

TEXT	EXPLANATORY NOTES
46. No evidence other than that which is relevant to whether or not the defendant has committed the alleged offence or violation shall be receivable in evidence at an adjudicatory hearing, except pursuant to the provisions of section 53.	The kind of evidence receivable on making a disposition should not be before the judge during adjudication, since it is largely hearsay. See page 87 of "Challenge of Crime in a Free Society" (U.S. President's Report), and the comment following section 21 of the First Tentative Draft of the Uniform Juvenile Court Act.

PROCEDURE AT HEARING

TEXT	EXPLANATORY NOTES
47. (1) The prosecution shall be conducted by a counsel appointed by the Attorney General, where the Attorney General has appointed such counsel.	
47. (2) The defendant is entitled to make his full answer and defense.	
47. (3) Subject to section ..78, every witness at a hearing in proceedings to which this Act applies shall be examined under oath.	

PROCEDURE AT HEARING

TEXT	EXPLANATORY NOTES
48. (1) The court shall, except in any case where the child or young person is legally represented, allow his parent or guardian to assist him in conducting his defence, including the cross-examination of witnesses for the prosecution.	The Summary Jurisdiction (Children and Young Persons) Rules, U.K. 1933, section 5, subsection (1), at page 366 of Clarke Hall and Morrison on Children, 7th edition.
48. (2) Where the parent or guardian cannot be found or cannot, in the opinion of the court, reasonably be required to attend, the court may allow any relation or other responsible person to take the place of the parent or guardian for the purposes of this section.	U.K. Rules, section 5(2) above.

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PROCEDURE AT HEARING

TEXT	EXPLANATORY NOTES
49. If, in any case where the child or young person is not legally represented or assisted in his defence as provided by subsection (1) of section 48, the child or young person, instead of asking questions by way of cross-examination, makes assertions, the court shall then put to the witness such questions as it thinks necessary on behalf of the child or young person and may for this purpose question the child or young person in order to elicit any point arising out of such assertions.	U.K. Rules - Section 9, subsection (2), page 367 of Clarke Hall and Morrison on Children. In paragraph 262, the Committee referred to this section 9 of the English rules and recommended "that appropriate steps be taken" (...) "to provide more adequate guidance to juvenile court judges on matters of procedures". This recommendation seems to be related mostly to the right of confrontation and cross-examination.

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PROCEDURE AT HEARING

TEXT

EXPLANATORY NOTES

ADJOURNMENT

50. The court may, in its discretion, before or during any hearing, except a detention hearing, adjourn such hearing to a time and place to be appointed, and stated in the presence of the parties or their respective counsel or agents, but no such adjournment shall, except with the consent of both parties, be for more than eight days.

HEARING

TEXT	EXPLANATORY NOTES
WITHOUT PUBLICITY	
51. (1) The hearings of children and young persons shall take place without publicity and separately and apart from the trials of adults.	This provision has been adapted from section 12(1) of the present Act. It may be redundant, and the words "separately and apart from the trials of adults" would not be appropriate if the Act covers adults in certain circumstances.

TEXT	HEARING	EXPLANATORY NOTES

PRIVATE

GENERAL PUBLIC EXCLUDED

51. (2) The general public shall be excluded from hearings under this Act and only such persons shall be admitted who, in the opinion of the judge, have a direct interest in the case or in the work of the court.

Recommendation 48 says that, "Members of the public should not be permitted to attend proceedings in a juvenile court, but the judge should be authorized to permit any member of the public to attend where he is satisfied that such a person has a bona fide reason to be present." In paragraph 245, the Committee recommended that the following persons be present: "members of the court and necessary court personnel; parties to the case, their counsel, and other persons having a direct interest in the proceedings." These persons should be included in the phrase "have a direct interest in the case or in the work of the court."

The present section 24(1) of the Juvenile Delinquents Act provides for the exclusion from the courtroom of children, other than the child witnesses. It is submitted that this provision is covered by the new draft provision opposite, which provides that, "only such persons shall be admitted who, in the opinion of the judge, have a direct interest in the case or in the work of the court."

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HEARING

TEXT	EXPLANATORY NOTES
51. (2) (Cont'd)	This provision conforms with current American legislation; for example, in section 19 of the Standard Juvenile Court Act, appears the following: "The general public shall be excluded, and only such persons shall be admitted who are found by the Judge to have a direct interest in the case or in the work of the court." The California Act, section 676, excludes the public, but then goes on to say that the Judge may nevertheless admit "such persons as he deems to have a direct and legitimate interest in the particular case or the work of the Court." Section 260.155 of the Minnesota Code is to the same effect. See also section 18 of the First Tentative Draft of the Uniform Juvenile Court Act, and section 1-20(6) of the Illinois Juvenile Court Act.

HEARING

TEXT	EXPLANATORY NOTES
EXCLUSION OF DEFENDANT 51. (3) The judge may, in his discretion, order that a defendant be absent from the courtroom, where any evidence is being given the knowledge of which might be injurious to the defendant.	A point that should be considered is whether or not the child or parent should be excluded from the "dispositional hearing" at the discretion of the judge. The provision opposite has been drafted for such consideration. Section 260.155 of the Minnesota Code includes the following: "In a delinquency proceeding, after the child is found to be a delinquent, the court may excuse the presence of the child from the hearing when it is in the best interests of the child to do so. In any proceeding the court may temporarily excuse the presence of the parent or guardian of a minor from the hearing when it is in the best interests of the minor to do so." The purpose served in excluding the child would be to prevent its hearing facts relevant to the disposition of the case, but damaging to the child.

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HEARING

TEXT	EXPLANATORY NOTES
NEWS MEDIA - PRESENT	
51. (4) One representative of the newspapers or other publications or radio shall have the right to be present at any hearing before a juvenile court judge, and, in addition, in the discretion of the judge, one or two other representatives of the newspapers or other publications or radio may be present, but in no case shall there be more than three representatives of the newspapers or other publications or radio present at any hearing under this Act.	Recommendation 47 states that "representatives of the news media should be permitted to attend juvenile court hearings as of right". In paragraph 244 appears the following sentence: "Moreover, we would also suggest that the number of media representatives should probably be limited to three." The Committee went on to say that: "Presumably these representatives would be selected by the media themselves, with a final decision left to the judge in the event of disagreement." We think that the method by which the representatives of the news media are selected does not need to be put into the legislation. At the April 1967 Couchiching Conference on Juvenile Delinquency, in the group seminar dealing with "the court", it was agreed that one member of the news media should be present as of right, and that two more might be present at the discretion of the judge, but that the statutory maximum should be set at 3. This would take the pressure off the judge during a sensational trial. ....

HEARING

TEXT	EXPLANATORY NOTES
51. (4) (Cont'd)	"Radio" is defined in section 28(30) of the new Interpretation Act to mean "any transmission, emission or reception of signs, signals, writing, images and sounds or intelligence of any nature by means of Hertzian waves". Presumably this includes television.

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HEARING

TEXT	EXPLANATORY NOTES
NEWS MEDIA - Reporting of Evidence 51. (5) Except where expressly prohibited by the judge, representatives of the newspapers or other publications or radio shall be permitted to report the evidence adduced at any hearing, but in no case shall the name of any child or young person or witness before the court, or any particular information serving to identify any child or young person before the court, be reported.	Recommendation 47 states that, "Representatives of the news media... except where expressly prohibited by the judge, should be permitted to report the evidence adduced at the hearing, subject to the prohibition against identifying any child before the court, or any child said to have committed an offence." The present section 12(3) now prohibits the publication of the identification of a child before the court on a charge of delinquency. The question of publicity is discussed in an article entitled "Publicity and Juvenile Court Proceedings" by Gilbert Geis, published in the Rocky Mountain Law Review, Vol. 30, No. 2, February 1958, and reprinted by the Children's Bureau, Washington. At page 26 of the reprint, Mr. Geis pointed out that the law should be phrased in such a way that the information obtained through "reportorial investigation", e.g. from the police, should be prohibited from being published. He said: "In this respect, the New Hampshire law nicely blankets the situation: ....

HEARING

TEXT	EXPLANATORY NOTES
51. (5) (Cont'd)	'It shall be unlawful for any newspapers to publish the name or address, or any particular information serving to identify any juvenile delinquent arrested, without the express permission of the court, and it shall be unlawful for any newspaper to publish any of the proceedings of any juvenile court'." At the Couchiching Conference, in the group discussing the court, it was recommended that the protection against identification be extended to witnesses, both adult and child, as a further protection against publicity to the child before the court.

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HEARING

TEXT	EXPLANATORY NOTES
PUBLICATION OF INFORMATION OBTAINED IN ANY WAY	
51. (6) It is unlawful to publish or broadcast the name of any child, young person, or witness appearing before the juvenile court, or the name of any child or young person apprehended by the police, or any particular information serving to identify any child or young person before the court or apprehended by the police.	Sub-section (4) refers specifically to reporters and to information gleaned during a hearing in a juvenile court. This sub-section is intended to cover the wide spectrum of "reportorial investigation" referred to by Geis. If proceedings against adults are to be included in this Act, consideration will have to be given as to whether adults should be protected against publicity. "Broadcasting" is defined by section 28(3) of the new Interpretation Act to mean "the dissemination of any form of radioelectric communication, including radiotelegraph, radiotelephone, the wireless transmission of writing, signs, signals, pictures and sounds of all kinds by means of Hertzian waves, intended to be received by the public either directly or through the medium of relay stations." Section 26(8) states: "Where a word is defined, other parts of speech and grammatical forms of the same word have corresponding meanings."

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HEARING

TEXT	EXPLANATORY NOTES
51. (7) It is unlawful to publish or broadcast the name of any child or young person, or any particular information serving to identify any child or young person in any criminal proceedings involving a child or young person, where the proceedings arise out of an offence against, or conduct contrary to, decency or morality.	In paragraph 241 of the Report, the Committee stated the following: "We think that the prohibition against identification of a child should extend to any criminal proceedings involving a child where the proceedings arise out of an offence against, or conduct contrary to, decency or morality. This prohibition should apply whether the proceedings are before the juvenile court or an adult court."
51. (8) Sub-sections (6) and (7) apply to all newspapers and other publications published anywhere in Canada, and to all radio broadcasts emanating from anywhere in Canada.	This sub-section is an expansion of section 12(4) of the present Act, which refers only to newspapers.
51. (9) Everyone who contravenes this section is guilty of an offence punishable on summary conviction.	When speaking of prohibitions against identifying children and young persons, the Committee stated: "This prohibition should be reinforced by an adequate penalty provision in the Act." (Paragraph 244).

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WAIVER OF JURISDICTION

TEXT	EXPLANATORY NOTES
WAIVER	
52. Where a young person is before the court upon an information alleging an offence, he, or the Attorney General, may, at any time before a plea is taken, require that he be tried by the ordinary court that would, except for the provisions of this Act, have jurisdiction under the law applicable to the case, and, where the young person or the Attorney General so requires, the court has no jurisdiction to try the young person, but, in case of conviction, the ordinary court shall remand the young person before the court for disposition pursuant to section 57.. of this Act.	Recommendation 17. The Committee endorsed the basic principle of present section 9 - that the decision on the matter of waiver of jurisdiction should rest exclusively with the juvenile court (Paragraph 168). However, the Committee conceded that the Attorney General might, in proper cases, where the interest of the community required a public hearing before the ordinary courts, require the trial to take place in the ordinary courts. The Committee contemplated a procedure whereby the Attorney General might so require, either directly or after refusal by the juvenile court judge to waive jurisdiction. (Paragraph 168). On the other hand, the Committee thought that the young person should have the right to insist upon trial in the ordinary courts. (Paragraph 171). The right of the Attorney General or the young person to require a trial in the ordinary court would deprive the juvenile court of its jurisdiction over the adjudication only; the ordinary court would be required to

....

WAIVER OF JURISDICTION

TEXT	EXPLANATORY NOTES
52. (Cont'd)	remand the young person, in case of a conviction, before the juvenile court for disposition. Paragraph 169 of the Report creates a procedural difficulty which is not clarified in recommendation 17, where it mentions the right of the Attorney General to require "directly" or after refusal. Indeed, the power of the Attorney General to require directly an ordinary trial is hard to reconcile in practical terms with the discretion of the court over waiver. The inclusion in the proposed section of the word directly would create the difficulty of determining whether the discretion of the judge or the power of the Attorney General has priority. The juvenile court judge has a discretionary power first, to decide if he should order a waiver hearing, and, second, to waive subsequent to the hearing. The mention of the direct power of the Attorney General to require an ordinary trial could be interpreted as having the effect, where exercised, of depriving the judge of his discretion.

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WAIVER OF JURISDICTION

TEXT	EXPLANATORY NOTES
52. (Cont'd)	Under the recommendation, the right of the Attorney General or the young person would arise only where no order of waiver was made by the judge. The situation could be envisaged where the judge decided to proceed to an adjudicatory hearing without considering the possibility of a waiver. The exercise, at that moment, of the right to require, on behalf of the Attorney General or the young person, an ordinary trial would invite the judge to exercise his discretion on waiver, i.e., waiver for trial and sentence. Should the judge decide not to waive, then the application of the proposed section would automatically operate a transfer of jurisdiction over trial only. This section does not reflect entirely the recommendation of the Committee. Instead of providing for the right of the Attorney General or defendant to be exercised at any time after the judge has decided not to waive, it provides for this right to be exercised at the arraignment, before a plea is taken. It is felt that this provision is more realistic and more practical in terms of procedure. Indeed, since the exercise

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WAIVER OF JURISDICTION

TEXT	EXPLANATORY NOTES
52. (Cont'd)	by the Attorney General or the defendant of their right to require an ordinary trial may defeat the discretion of the judge, it is preferable to provide for the exercise of this right before the judge takes any decision concerning waiver.

WAIVER OF JURISDICTION

TEXT

53. (1) At any time during an adjudicatory hearing concerning a young person charged with an offence, but before the defence has commenced, the court may order that the young person be taken before the ordinary court that would, except for the provisions of this Act, have jurisdiction under the law applicable to the case

(a) for trial and sentence, or

(b) for trial only; in such case, if the young person is convicted, the ordinary court shall remand him before the court for disposition pursuant to section .57. of this Act.

EXPLANATORY NOTES

The purpose of this section is to implement Recommendation 16, which indicates that the Committee approved of the principle of sub-section (1) of present section 9 of the Juvenile Delinquents Act. The Committee approved of the age requirement of present section 9, i.e., that the accused be fourteen years of age or more (Recommendation 18, paragraph 173), but recommended that the requirement whereby waiver is possible only where the alleged offence is indictable be removed. The proposed section allows waiver only where a young person is alleged to have committed an offence.

The Committee recommended further that, by way of supplemental procedure to present section 9, a case could be referred to the ordinary court for trial only, and then be remanded to the juvenile court for disposition. (Recommendation 17, See also paragraph 168).

The two proposed techniques of waiver are provided for in this section: The court may refer the young person to the ordinary court for trial and sentence (present section 9), or for trial only; in

....

WAIVER OF JURISDICTION

TEXT	EXPLANATORY NOTES
53. (1) (Cont'd)	the latter case, the ordinary court shall remand the young person to the juvenile court for disposition. (Kansas Statutes Annotated, Supplement 1965, Juvenile Code, section 38-808(a), referred to). By implication of recommendation 20(b), the referral order should be in writing. It should be noted that waiver could be ordered to a provincial summary conviction court, should the schedule refer to a provincial law for the definition of an offence.
53. (2) The court shall, in considering whether an order pursuant to this section should be made, consider the good of the young person and the interest of the community.	This section retains the principle enunciated in subsection (1) of present section 9. This statutory test was also recommended by the Committee. (See recommendation 16 and paragraph 168).

....

WAIVER OF JURISDICTION

TEXT	EXPLANATORY NOTES
53. (3) Where, upon reasonably strong evidence having been adduced at a hearing before a juvenile court judge that a young person has committed an offence, and notice of such hearing has been served on the parent or guardian of the young person, the court deems it advisable under subsection (2) to consider whether an order should be made under this section, it shall	The Committee recommended provision for specific checks in the exercise of the discretion of the juvenile court judge concerning waiver. This subsection is concerned with implementing these recommendations. See paragraph 174 for reference to a waiver hearing. See recommendation 20(c) and also paragraph 175 concerning the requirement that notice of a waiver hearing be sent to the parents. This paragraph complies with recommendations 20(c) and 19. See paragraph 173 of the Report for a discussion of the condition precedent set out in paragraph (a).
(a) cause a full investigation to be conducted under its supervision into the background of the young person and the circumstances of the offence and, pursuant thereto, it may order any social, medical, psychological or psychiatric examination or investigation that it thinks necessary or desirable;	The Committee makes a full investigation into the background of the case a condition precedent to waiver (recommendation 20(a)), but recommendation 19 requires that there be reasonably strong evidence against the young person before the judge can order the investigation to be conducted. This paragraph is intended to cover the suggestion set out in paragraph 174, and recommendation 20(a).

....

WAIVER OF JURISDICTION

TEXT	EXPLANATORY NOTES
53. (3) (Cont'd)	
(b) make a specific finding that the young person is not subject to committal to an institution for the mentally deficient or the mentally ill;	See recommendation 16. The finding required by this paragraph, as that in (a), applies to both kinds of waiver: trial only and both trial and sentence. (See also paragraph 168 of the Report)
(c) in the case of an order under paragraph (a) of subsection (1), make a specific finding	The requirement that there be a specific finding that the young person is not suitable for treatment in any institution available to young offenders, or that the offender should continue under restraint for a longer period, obviously applies to a waiver for trial and sentence and not to a waiver for trial only, although Recommendation 16 does not distinguish between these two conditions precedent and that contained in paragraph (b) above.
(i) that the young person is not suitable for treatment in any available institution or facility designed for the care and treatment of young persons, or	
(ii) that the safety of the community requires that the young person continue under restraint for a period longer than the court would, in case of an adjudication that he is a young offender, be authorized to order.	

....

WAIVER OF JURISDICTION

TEXT	EXPLANATORY NOTES
53. (4) No order pursuant to this section shall be valid unless it is in writing, and written reasons in support thereof are stated in the record.	This subsection implements part of recommendation 20(b) as a further check on the exercise of the discretionary power of the judge over waiver. (See also paragraph 175). Recommendation 20(b) is also to the effect that these written reasons should be forwarded to the ordinary court. This part of the recommendation has not been carried out. If it were implemented, it would mean that the judge of the ordinary court would have information before him relating to the background of the accused, information irrelevant to proof of the offence.
53. (5) An order pursuant to this section may be in Form 15 or 16, as the case may be.	

....

WAIVER OF JURISDICTION

TEXT	EXPLANATORY NOTES
54. (1) The judge who makes an order pursuant to section 53 has no jurisdiction to try the young person in his capacity as a judge, justice or magistrate under any other law.	
54. (2) Where a judge, acting under section 53, deems it advisable that the proceedings continue under this Act, and the young person does not admit the facts of the information, such judge shall have no jurisdiction to continue the proceedings under this Act, and another judge shall proceed to conduct an adjudicatory hearing de novo.	"If the judge decides not to waive jurisdiction and the young person contests the charge, the fact that there has been an inquiry into background information would require the judge to relinquish jurisdiction in favour of another juvenile court judge ....." (Paragraph 174).

....

WAIVER OF JURISDICTION

TEXT	EXPLANATORY NOTES
55. Where a request or an order is made under section 52 or section 53 respectively, criminal proceedings may be commenced in the ordinary courts in accordance with any other law that is applicable, and, for the purposes of such proceedings,	
(a) proceedings under this Act shall be deemed never to have been commenced, and	
(b) the time that has expired during proceedings under this Act shall be deemed never to have run for the purposes of any period of limitation fixed by law in respect of the offence charged.	

....

ADJUDICATION

TEXT

56. (1) Where the court has heard the prosecutor, defendant and witnesses, it shall, after considering the matter, adjudge the information to have been proved, or dismiss it, as the case may be.

EXPLANATORY NOTES

Recommendation 64.

The purpose of the adjudicatory hearing is to ascertain whether the defendant has committed the acts alleged in the information.

No background investigation should be made before the adjudication.

The Committee contemplated that an adjudication upon the facts would not lead automatically to an adjudication that the defendant is an offender or violator. It should form instead the basis for an investigation by the court into the circumstances of the case and the background of the offender, and, following this, for some further order by the court.

....

ADJUDICATION

TEXT

56. (2) An adjudication pursuant to subsection (1) that the information has been proved shall not be deemed to be an adjudication that a defendant is an offender or a violator, as the case may be.

EXPLANATORY NOTES

This section purports merely to implement recommendation 64. In fact, there is no substantial difference between a trial under the Criminal Code and an adjudicatory hearing under the proposed Act, except that an adjudication in the former is called a conviction order, or a dismissal, while, in the latter, the adjudicatory hearing culminates in a mere finding concerning whether the facts alleged are proved or not. A positive finding is not a conviction, and it has no juridical effect other than allowing the court to enter a dispositional hearing, the purpose of which is to find how the defendant should be treated.

The proposed section makes no mention of the quantum of proof that has to be discharged by the prosecution in order to secure a positive adjudication.

Section 7(1) of the Criminal Code, which continues in force the rules and principles of the Common law, makes the reasonable doubt doctrine applicable to this section.

....

DISPOSITION - FINAL ADJUDICATION

TEXT	EXPLANATORY NOTES
DISPOSITION HEARING	
57. Where the judge has adjudged the information to have been proved, he shall hear evidence on the question of the final adjudication to be made in the case, and shall receive in evidence the social history report of the defendant made pursuant to section .66. of this Act, and such other relevant and material evidence as may be offered, and thereupon the judge, as he deems it advisable, may	
Absolute discharge	
(a) discharge the child or young person absolutely, where the judge is of the opinion that the appearance of the child or young person before the court is all that is necessary to ensure that he will not engage in further offences or violations;	There is a specific recommendation concerning this provision (Recommendation 66). The Committee was of the opinion that, where the fact of a court appearance itself is all that is necessary to ensure that a child or young person does not engage in further anti-social conduct, the judge should be authorized to discharge the child without a specific finding of delinquency. (Paragraph 290).

....

DISPOSITION - FINAL ADJUDICATION

TEXT	EXPLANATORY NOTES
57. (Cont'd) Provisory disposition (b) adjourn the case for a period of not longer than two months, provided that the child or young person and his parent or guardian agree to follow a specified course of action directed by the judge, which may include the measures set out in one or more of paragraph (b) of section 58, paragraph (b) of section 59, or paragraph (c) of section 60, as the case may be, or subsection (1) of section 67, or paragraph (b) of section 60, or any other activity or undertaking that the judge deems to be in the best interests of the child or young person, and order the child or young person before him for final adjudication pursuant to this section;	There is a specific recommendation concerning this provision. (Recommendation 65). This subsection should permit the courts to accomplish, with proper legal sanction, the purpose for which the adjournment sine die procedure is being employed at the present time. The Committee was of the opinion that, in the circumstances, the child and his parents should agree to a certain amount of supervision, even when no final adjudication has been made. The general provision at the end is intended to permit the judge to order the child to attend a "drop-in" centre, or to take advantage of some other neighbourhood facility.

....

DISPOSITION - FINAL ADJUDICATION

TEXT	EXPLANATORY NOTES
57. (Cont'd) Law of province to apply (c) where he is of the opinion that the evidence furnishes good grounds for believing that the defendant should be dealt with as a child or young person in need of supervision, order that the information be dismissed, and proceed instead under the applicable provincial statute intended for the protection or benefit of children or young persons, if he has jurisdiction under such provincial statute;	The Report recommends such a procedure. (See recommendation 64 and paragraphs 286 and 287). In paragraph 286 of the Report, it is stated that the court should have the power to suspend further action and proceed under provincial legislation "at any stage of the proceeding"; however, in recommendation 64, the Committee specifically recommended that this alternative be included in the disposition provisions. Provision for such an alteration of proceedings is set out in article 716 of the New York Family Court Act. This section should cover what appears to be the intention behind section 39 of the present Juvenile Delinquents Act, which provides that, "Nothing in this Act shall be construed as having the effect of repealing or over-riding any provision of any provincial statute intended for the benefit of children; and when a juvenile delinquent who has not been guilty of an act which is, under the provision of the Criminal Code an indictable offence,

....

DISPOSITION - FINAL ADJUDICATION

TEXT

57. (c) (Cont'd)

EXPLANATORY NOTES

comes within the provisions of a provincial statute, it may be dealt with either under such Act or under this Act as may be deemed to be in the best interests of such child."

A provision such as this one would give the court a desirable degree of flexibility.

(For a discussion on such alterations of proceedings, see the Note entitled "Rights and Rehabilitation in the Juvenile Courts", at pages 281 to 341, and particularly pages 300 to 310, in the Columbia Law Review, February 1967, Vol. 67, No. 2).

Of interest is a reference to provincial law in the Prisons and Reformatories Act.

Section 70 of that Act was discussed in the explanatory note opposite the provision dealing with informal adjustment. In effect, that section, which relates to Ontario, provides for informal disposition in certain cases involving an offence against the law of Canada. The court may "bind the child out to some suitable person" under the provisions of the law of Ontario, place the child in a foster home, or commit the child to a provincial institution. Section 71

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DISPOSITION - FINAL ADJUDICATION

TEXT	EXPLANATORY NOTES
57. (c) (Cont'd)	states that, when such an order has been made, "the child may thereafter be dealt with under the law of the Province of Ontario, in the same manner, in all respects, as if such order had been lawfully made in respect of a proceeding instituted under authority of a statute of the Province of Ontario."
Final adjudication 57. (d) make an adjudication that the defendant is, as the case may be, a child offender, a young offender, or a violator.	

....

DISPOSITION

TEXT	EXPLANATORY NOTES
VIOLATOR	
58. When a child or young person has been adjudged a violator, and after the judge has heard evidence on the question of the proper disposition to be made in the case, the judge may make an order of disposition that shall include one or more of the following measures:	
(a) impose a fine not exceeding twenty-five dollars, which may be paid in periodical amounts or otherwise;	The Committee recommended that the maximum fine be increased to one hundred dollars, except for an offender under fourteen years of age. (Recommendation 69, paragraph 296). Payment by instalments was endorsed by the Committee. It is not clear what the maximum fine should be for a violator; however, since it is contemplated that a violator will have committed a very minor offence, we cannot see any reason for raising the amount of the fine to be paid.

....

DISPOSITION

TEXT	EXPLANATORY NOTES
58. (Cont'd) (b) place the child or young person under the supervision of a probation officer, or any other suitable person, under conditions set out by the judge, but no such order shall exceed two years;	This wording was endorsed by the Committee in paragraph 305, where it is stated: "Another suggestion is that the provision that empowers the court to 'commit the child to the care or custody of a probation officer or of any other suitable person' should be replaced by a provision empowering the court to 'place the child under the supervision of a probation officer, or any other suitable person'. As one submission explains, the existing provision 'is not clear since it does not specify the import of the term "custody" in relationship to its duration, the effect upon parental relationships of such an order, or the responsibilities (financial and legal) of the person to whom custody is awarded'." Recommendation 73 is to the effect that the "legal effect of supervision should be clarified." It then refers to paragraph 305, which, as quoted above, states that the legal effect of the word "custody" was not clear, and therefore recommended the wording that has been used in (b) opposite, where the word "supervision" has replaced the word

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DISPOSITION

TEXT	EXPLANATORY NOTES
58. (b) (Cont'd)	"custody". The Committee endorsed the wording used opposite. We think that recommendation 73 is in error in summarizing the gist of paragraph 305, and that, therefore, it is not necessary to clarify the legal effect of supervision. Paragraph 24 of the 1962 Report of the Sub-Committee on Juvenile Delinquency, 1962, Legislation Committee, Probation Officers Association - Ontario, states that: "A revised Act should amend the court's power to 'commit the child to the care or custody of a probation officer or of any other suitable person' and should substitute the power to 'place the child under the supervision of a probation officer or of any other suitable person'." With regard to the two year limitation period, paragraph 186 of the Report states that, "A child whose situation does not warrant committal to an institution should, we think, be subject to control for a period not exceeding two years." The transfer of probation orders is provided for elsewhere in this Act.

....

DISPOSITION

TEXT	EXPLANATORY NOTES
58. (Cont'd) (c) place the child or young person in a suitable foster home or group home, or other shelter facility, for a period not exceeding two years, with the consent of the parent or parents, or guardian, and, where there are two parents in the home of the child or young person, with the consent of both parents, but only after he has considered a pre-disposition report with respect to that child or young person;	Recommendation 12 and paragraph 149 state that a violator should not be removed from his home and placed in a foster home without the consent of his parents. The maximum period of two years conforms with the Committee's recommendation in paragraph 186 of the Report. Recommendation 61 and paragraph 279 of the Report recommend that a pre-sentence report be a pre-requisite to taking a child out of the home.

DISPOSITION

TEXT	EXPLANATORY NOTES
58. (Cont'd) (d) impose upon the child or young person such further or other conditions as may be deemed advisable and for the good of the child or young person;	The Committee made no recommendation reflecting upon this provision, which is the present 20(1)(g) of the Juvenile Delinquents Act. Against this provision, it could be said that it gives a judge legal sanction to impose any kind of condition, no matter how onerous or tyrannical; on the other hand, a certain amount of flexibility may be necessary in a vast country where there are many isolated areas and varying communities. This provision is one that should, and no doubt will, be considered critically.

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DISPOSITION

TEXT	EXPLANATORY NOTES
58. (Cont'd)	
(e) commit the child or young person to the charge of any children's aid society, duly organized under an Act of the legislature of the province and approved by the Lieutenant-Governor in Council, or, in any municipality in which there is no children's aid society, to the charge of the superintendent, if one there be, for a period not exceeding two years, but only after the judge has considered a pre-disposition report with respect to that child or young person.	Present section 20(1)(h) of the Juvenile Delinquents Act. A "pre-sentence" report should be a pre-requisite to taking a child out of his home. (Recommendation 61, also paragraph 279). See paragraph 186 of the Report concerning the two year limitation. The superintendent referred to in this and subsequent sections is the provincial superintendent of child welfare, or similar officer.
	Provision 20(1)(i) of the Juvenile Delinquents Act is not relevant, since the Committee has recommended that a "violator" should not be sent to a training school. (Recommendation 12, paragraph 313).

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TEXT	DISPOSITION	EXPLANATORY NOTES
CHILD OFFENDER		
59. When a child has been adjudged a child offender, and after the judge has heard evidence on the question of the proper disposition to be made in the case, the judge may make an order of disposition that shall include one or more of the following measures:		
(a) impose a fine not exceeding twenty-five dollars, which may be paid in periodical amounts or otherwise;		The Committee recommended that the maximum fine for a child offender be kept at twenty-five dollars. (Recommendation 69 and paragraph 295). The Committee also recommended that payment be made, at the order of the court, by instalments. (Recommendation 69, paragraph 295).
(b) place the child under the supervision of a probation officer, or any other suitable person, under conditions set out by the judge, but no such order shall exceed two years;		The new wording of this provision was endorsed by the Committee in paragraph 305. For a discussion on the point, see the notes opposite the same provision concerning "violator". The 2-year limitation period placed on this method of disposition was recommended in paragraph 186 of the Report. This time limit also conforms to recommendation 25 in the brief prepared by the Probation Officers Association of Ontario.

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DISPOSITION

TEXT	EXPLANATORY NOTES
59. (Cont'd)	
(c) cause the child to be placed in a suitable foster home or group home, or other shelter facility, for a period not exceeding two years, but only after the judge has considered a pre-disposition report with respect to that child;	The Committee made no recommendation concerning parental consent. A "pre-sentence" report should be a pre-requisite to taking a child out of his home. (Recommendation 61, also paragraph 279).
(d) impose upon the child such further or other conditions as may be deemed advisable and for the good of the child;	See notes opposite this provision concerning violator.

DISPOSITION

TEXT	EXPLANATORY NOTES
59. (Cont'd)	
(e) commit the child to a training school for a period not exceeding three years, but only after the judge has considered a pre-disposition report with respect to that child, and only after every effort has been made to treat such child in its own home, or in a foster home, group home, or other shelter facility;	The term training school has replaced the term "industrial school." (Recommendation 75, also paragraph 312). The time limit of three years follows the Committee's recommendation 23, and also paragraph 183 of the Report. Recommendation 76 of the Report stated that "Institutional commitment should be ordered only as a last resort and the Act should be strengthened in order to give more adequate expression to this approach to the treatment of the juvenile offender." Paragraph 313 expresses the same attitude. It is intended that this provision embrace the intent of the present section 25 of the Juvenile Delinquents Act, which provides as follows: "It is not lawful to commit a juvenile delinquent apparently under the age of twelve years to any industrial school, unless and until an attempt has been made to reform such child in its own home or in the charge of a Children's Aid Society, or of a superintendent, and unless the court finds that the best interests of the child and the welfare of the community require such commitment."

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DISPOSITION

TEXT	EXPLANATORY NOTES
59. (Cont'd) (f) commit the child to the charge of any children's aid society, duly organized under an Act of the legislature of the province and approved by the Lieutenant-Governor in Council, or, in any municipality in which there is no children's aid society, to the charge of the superintendent, if one there be, for a period not exceeding two years, but only after the judge has considered a pre-disposition report with respect to that child.	Present section 20(1)(h) of the Juvenile Delinquents Act, with added condition precedent requiring consideration of pre-disposition report. See paragraph 186 of the Report concerning the two year limitation.

....

DISPOSITION

TEXT	EXPLANATORY NOTES
YOUNG OFFENDER	
60. When a young person has been adjudged a young offender, and after the judge has heard evidence on the question of the proper disposition to be made in the case, the judge may make an order of disposition that shall include one or more of the following measures:	
(a) impose a fine not exceeding one hundred dollars, which may be paid in periodical amounts or otherwise;	The Committee recommended that the maximum fine be increased to one hundred dollars, except where the offender is under fourteen years of age. (Recommendation 69).
(b) make an order of restitution in an amount not exceeding one hundred dollars, which may be paid in periodical amounts or otherwise;	This provision is in compliance with recommendation 71 and paragraph 299 of the Report. Restitution should apply only to a person fourteen years of age or older.
(c) place the young person under the supervision of a probation officer, or any other suitable person, under conditions set out by the judge, but no such order shall exceed two years;	See notes opposite (b) in provisions concerning disposition of child offender and violator.

....

DISPOSITION

TEXT	EXPLANATORY NOTES
60. (Cont'd)	
(d) cause the young person to be placed in a suitable foster home or group home, or other shelter facility, for a period not exceeding two years, but only after the judge has considered a pre-disposition report with respect to that young person;	See notes opposite (c) concerning the disposition of a "child offender".
(e) impose upon the young person such further or other conditions as may be deemed advisable and for the good of the young person;	See notes opposite this provision concerning violator.
(f) commit the young person to a training school for a period not exceeding three years, but only after the judge has considered a pre-disposition report with respect to that young person, and only after every effort has been made to treat such young person in its own home, or in a foster home, group home or other shelter facility;	See notes opposite paragraph (e) concerning the disposition of a "child offender".

....

DISPOSITION

TEXT	EXPLANATORY NOTES
60. (Cont'd) (g) commit the young person to the charge of any children's aid society, duly organized under an Act of the legislature of the province and approved by the Lieutenant-Governor-in-Council, or, in any municipality in which there is no children's aid society, to the charge of the superintendent, if one there be, for a period not exceeding two years, but only after the judge has considered a pre-disposition report with respect to that young person.	Present section 20(1)(h) of the Juvenile Delinquents Act, with added condition precedent requiring consideration of pre-disposition report. See paragraph 186 concerning the two year limitation.

DISPOSITION

TEXT	EXPLANATORY NOTES
TRAFFIC OFFENDER 61. Where a child or young person has been adjudged a child offender, a young offender or a violator, as the case may be, concerning a traffic offence or violation, the juvenile court may, in lieu of or in addition to any order that it may make pursuant to section 58, 59 or 60, as the case may be, make any or all of the orders provided in paragraph (c) of section 94. .	The Committee suggested in paragraph 154 "that the disposition provisions of the Act should perhaps be amended to indicate more specifically the powers of the Juvenile Court Judge in juvenile traffic cases. Included would be the power to impose restrictions on the use of an automobile, to order suspension or revocation of a driving licence and possibly to order attendance at a driver's school". The Committee also recommended that adequate provisions be made for implementing provincial legislation relating to the assessing of demerit points, the suspension or revocation of a licence upon conviction of a driving offence or accumulation of a specified number of demerit points.

....

PROBATION ORDERS

TEXT	EXPLANATORY NOTES
CONTENTS	
62. (1) Where an order is made under this Act placing a child or young person under the supervision of a probation officer, or any other designated suitable person, such order shall include:	This provision is adapted from recommendation 12 of the "Proposals for Probation" made by the Canadian Corrections Association, dated February 1, 1967.
(a) the name of the court making the order;	
(b) the name of the court within whose territorial jurisdiction the child or young person resides or will reside;	
(c) the requirement that the child or young person be of good behaviour;	
(d) the requirement that the child or young person shall appear when called upon during the period of the probation order so that the judge may vary the order placing the child or young person on probation;	Paragraph (d) makes it clear that the court has the power to vary a probation order.

....

PROBATION ORDERS

TEXT	EXPLANATORY NOTES
62. (1) (Cont'd)	
(e) the requirement that the child or young person be under the supervision of a probation officer appointed or assigned to that territorial jurisdiction, or a suitable person designated by the judge;	
(f) the requirement that the child or young person report to the probation officer or designated person in accordance with instructions given by the judge and receive visits at his home by the probation officer or designated person; and	
(g) such order may include such further conditions as the judge considers desirable in the circumstances.	Recommendation 12(b) of the "Proposals for Probation" approves of the discretionary powers available to the court under section 638(2) of the Criminal Code.

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PROBATION ORDERS

TEXT	EXPLANATORY NOTES
CONTENTS	
62. (2) Where an order is made under this Act placing a child or young person under the supervision of a probation officer, or any other designated suitable person, the judge making the order shall explain to the child or young person the purpose and effect of such order.	Recommendation 16 of "Proposals for Probation" calls for a judge to explain the terms of a probation order to an adult; therefore, it would seem appropriate that provision be made to require a judge to explain such an order to a child or young person.

PROBATION ORDERS

TEXT	EXPLANATORY NOTES
CONTENTS	
62. (3) A copy of the probation order, signed by the judge who made the order, shall be served upon the child or young person who is the subject of the order, and upon the parent, or the parents, or the guardian of such child or young person.	This provision is in accordance with recommendation 17 of the above mentioned "Proposals for Probation" submitted by the Canadian Corrections Association. That recommendation adds: "...and that he be required to endorse the original order to the effect that a copy has been served upon him, that he understands its terms and conditions, and agrees to abide by them." The inclusion of this provision should be considered subject to the views of probation officers. Perhaps there should also be a statutory requirement, in the words of recommendation 18 of the "Proposals for Probation" of the Canadian Corrections Association brief, "that the court send a copy of the order to the probation officer of the court".

....

DISPOSITION SUBSEQUENT

TEXT	EXPLANATORY NOTES
PORTABLE PROBATION ORDERS	
63. Where, under this Act, a child or young person placed on probation subsequently moves outside the jurisdiction of the judge who placed the child on probation, such judge shall notify the judge of the jurisdiction to which the child or young person is moving of the circumstances surrounding the case, and shall forward a copy of his order of disposition in the case to such judge, who will then have the same powers over the child or young person as he would have had if the case had originally been heard in his court.	Recommendation 73 of the Report states as follows: "The law should make provision for the transfer of probation orders from one court to another....." (See also paragragraph 305). A provision such as this was recommended in the brief submitted by the Probation Officers Association of Ontario. (Recommendation 27, page 12 of that brief).

....

DISPOSITION SUBSEQUENT

TEXT	EXPLANATORY NOTES
ORDER OF DISCHARGE	
64. A judge, when he is of the opinion that a child or young person whom he adjudged a violator, a child offender, or a young offender, as the case may be, no longer requires the supervision of the court, may discharge such child or young person from the supervision of the court, and thereafter no further action may be taken in respect of the matter that brought the child or young person within the jurisdiction of the court.	This provision is in accordance with recommendation 28, and paragraph 186 of the Report, which endorse a principle contained in the brief submitted by the Canadian Corrections Association. This principle is contained in section 20(3) of the present Juvenile Delinquents Act, which says: "....the court may ....discharge the child on parole or release it from detention...."

DISPOSITION SUBSEQUENT

TEXT	EXPLANATORY NOTES
CHILD OR YOUNG PERSON BROUGHT BACK BEFORE THE JUDGE	
65. Where a child or young person has been adjudged a violator, a child offender, or a young offender, as the case may be, and is still under the supervision of the court, the judge may, by summons or warrant as provided in sections 21, 22, 23, 24 and 25 of this Act, cause the child to be brought before the court, and take any action provided by section 58 in the case of a child or young person adjudged to be a violator, or by section 59 in the case of a child adjudged to be a child offender, or by section 60 in the case of a young person adjudged to be a young offender, provided that notice of such hearing has been sent to the parent, parents or guardian, pursuant to section 26 of this Act, and provided that the court has heard evidence pursuant to section 57 of this Act.	There is no recommendation in the Report concerning this point; however, it would appear to be necessary and is implicit in section 20(3) of the present Juvenile Delinquents Act. (The U.S. Acts have a "varying order" provision: for example, Standard Family Court Act: Section 26; California: Sections 775-6; Uniform Juvenile Court Act: section 28; New York: Sections 762-766. This provision should allow a judge to send a child or young person to training school, when that child offender or young offender has proved to be unsuitable for probation. At the same time, by providing that such child "is still under the supervision of the court", no child who has been discharged by payment of fine, or who has made restitution could be brought again before the court to be subjected to further disposition.

....

PRE-DISPOSITION REPORT

TEXT	EXPLANATORY NOTES
INVESTIGATION AND REPORT 66. (1) Where, in an adjudication under this Act, a judge has adjudged the information to have been proved, he shall direct a probation officer, or other qualified person, to investigate the personal and family history and environment of the child or young person who is the subject of the information, and to submit in writing to him a pre-disposition report with respect to such child or young person based on the findings of such investigation.	The Report of the Couchiching Conference recommends the term "predisposition history". While there is no specific recommendation in the Report concerning making a pre-sentence (or "pre-disposition") report mandatory, in footnote 3, at pages 190-1, appears the following: "For these reasons, there would seem to be merit in the view that as a minimum requirement the pre-sentence report should be the subject of a specific reference in the Act." Following this comment, sections 23 and 24 of the Standard Juvenile Court Act are cited. Recommendation 22 of the brief submitted by the Probation Officers Association calls for a statutory provision requiring a social history investigation. The expression "Investigate the personal and family history and environment" are taken from 260.151 of the Minnesota Code. Section 23 of the Standard Juvenile Court Act states as follows: "....The investigation shall cover the circumstances of the offence or complaint, the social history and ....

TEXT	EXPLANATORY NOTES
66. (1) (Cont'd)	present condition of the child and family, and plans for the child's immediate care, as related to the decree...."
	It is commonly accepted that such a report should not be available to the judge until he has made his adjudication.
	Recommendation 22 of the Probation Officers' brief says that such investigation should be made "following a finding of delinquency".
	The comment following section 21 of the First Tentative Draft of the Uniform Juvenile Court Act is as follows:
	"Provisions of this kind are common. They enable the court to become fully informed before making a disposition. The information obtained is for that purpose, not for the purpose of establishing the allegations of the petition".
	Item (3) of paragraph 303 of the Report states that:
	"The probation officer should be responsible for pre-sentence investigation"; however, there was no specific recommendation for legislation to this effect.

....

PRE-DISPOSITION REPORT

TEXT	EXPLANATORY NOTES
PRIVILEGED COMMUNICATIONS 66. (2) Information given by a child or young person to a probation officer or other qualified person during the course of an investigation pursuant to sub-section (1) shall not be used or receivable in evidence against that child or young person in any criminal proceeding against him thereafter taking place.	Recommendation 4 of the "Proposals for Development of Probation in Canada" of the Canadian Corrections Association, dated February 1, 1967, states as follows: "That provision be made for ensuring that information given by an offender to a probation officer in the course of preparing a pre-sentence report, or in the course of counselling, be regarded as a privileged communication insofar as any other criminal or civil proceeding is concerned". In the notes following, it is explained that it is essential for the probation officer to work with his client in an atmosphere of trust, where the offender is actively encouraged to speak freely about his life. This brief was concerned with the probation of adults; however, presumably the same principles apply in this instance. As this section is now drafted, the offender is protected from his evidence being used against him in a criminal proceeding. Section 5 of the Canada Evidence Act was looked at.

....

PRE-DISPOSITION REPORT

TEXT	EXPLANATORY NOTES
66. (3) A pre-disposition report made pursuant to sub-section (1) shall be made available to the counsel or other person appearing with the child or young person, or if the child or young person appears alone, at the discretion of the judge, to such child or young person, and to counsel representing the Crown, where such counsel has been appointed, before the court has made its disposition in the case, and the counsel or other person appearing with the child or young person shall have an opportunity to cross-examine the probation officer or other qualified person who submitted such report.	There should be a right to cross-examine a probation officer on his report, which probably consists primarily of hearsay evidence, (Recommendation 62 and paragraph 283 are the relevant references in the Report). Recommendation 5 and the following comment contained in the "Proposals for Probation" submitted by the Canadian Corrections Association deal with the subject. The recommendation reads that: "The court shall, before disposition ensure (1) that the offender or his counsel have had a chance to read the report and have had an opportunity to comment upon it; (2) that the pre-sentence report be a privileged document available to (a) court, (b) accused or counsel, (c) crown attorney, (d) an institution to which the accused is sent, (e) parole service, (f) any other person designated by the court".

....

PRE-DOSPOSITION REPORT

TEXT	EXPLANATORY NOTES
66. (3) (Cont'd)	Section 5-1(2) of the Illinois Juvenile Court Act, provides as follows: "Before making an order of disposition the court shall advise the State's Attorney, the parents, guardian, custodian or responsible relative or their counsel of the factual contents and the conclusions of reports prepared for the use of the court and considered by it, and afford fair opportunity, if requested, to controvert them. The court may order, however, that the documents containing such reports need not be submitted to inspection, or that sources of confidential information need not be disclosed". At page 9 of the pamphlet entitled, "Theory and Development of Pre-sentence Reports in Ontario" prepared by G.G. McFarlane of the Ontario Probation Service, it is indicated that the practice in Ontario is to submit copies of the pre-sentence report to the Bench, to the Crown, and to the Defence. This provision, as it now stands, means that a social history report will not be available to a child or young person as of right, if he is

....

PRE-DISPOSITION REPORT

TEXT	EXPLANATORY NOTES
66. (3) (Cont'd)	unrepresented, but only at the discretion of the judge. The reason behind this limitation is the problem posed where the information contained in such a report would be damaging to the child or young person, such as where the child is illegitimate or the mother is a prostitute, to use two examples set out in paragraph 281 of the Report.
66. (4) A pre-disposition report made pursuant to subsection (1) shall be made available to, in addition to those persons mentioned in subsection (3), a training school to which the child or young person is sent, any probation officer or other designated person under whose supervision the child or young person is placed, a parole board, and any other person designated by the court.	This provision would implement part of recommendation 5 of the "Proposals for Probation" of the Canadian Corrections Association discussed above.

....

PRE-DISPOSITION REPORT

TEXT	EXPLANATORY NOTES
66. (5) A pre-disposition report made pursuant to subsection (1) shall be considered a document of the court, and shall form part of the record relating to the child or young person with whom it is concerned.	Recommendation 1(4) of the "Proposals for Probation" submitted by the Canadian Corrections Association recommends: "that the pre-sentence reports be a document of the court". This provision would ensure that the report would be considered to be part of the record, and would therefore be subject to the same protection against disclosure as the record.

....

MEDICAL, etc. REPORTS

TEXT	EXPLANATORY NOTES
67. (1) A judge may order that a child or young person who is the subject of an information be examined by a physician, psychiatrist, psychologist, or by qualified persons at a venereal disease control clinic, but in no case shall such an examination be ordered prior to the adjudication that the information has been proved, except where a child or young person is considered so mentally ill as to be unable to instruct counsel, or is being held in detention and a medical examination is ordered to ensure that he is not a carrier of a communicable disease.	While there is no formal recommendation in the Report concerning medical examinations, footnote 4 on page 191 of the Report states as follows: "Examination of the child by a psychiatrist, psychologist or physician will obviously be necessary in certain cases. The authority of the court to order the appropriate examinations, including tests for venereal disease, should be stated expressly in the Act. At the same time, the Act should make it clear that the court has no power to order any such examination, other than possibly a routine medical examination prior to establishing that the child has committed the offence alleged against him". In paragraph 265 of the Report appears the following statement: "Until the child is found to have committed the act complained of, the state should have no right to infringe the child's interests in preserving his privacy except in the most urgent cases. A child considered so mentally ill or feebleminded as to be unable to instruct counsel must be examined by scientific

....

MEDICAL, etc. REPORTS

TEXT	EXPLANATORY NOTES
67. (1) (Cont'd)	experts. Again, a child held in detention will have to be given a physical examination to ensure that he is not a carrier of contagious diseases". Authority to order such examination is provided in the Standard Juvenile Court Act, section 22 and, for example, in section 48.24 of the Wisconsin Children's Code.

MEDICAL, etc. REPORTS

TEXT	EXPLANATORY NOTES
TREATMENT	
67. (2) Where an examination conducted pursuant to subsection (1) discloses that the child or young person being examined is in need of treatment, a judge may order the child or young person to be so treated.	This provision is solely for discussion purposes. Section 22 of the Standard Juvenile Court Act has such a provision. The Report of the Justice Committee made no recommendation in this respect. It is questionable whether this subsection should be included in the Act. It would have the effect of forcing medical, psychiatric or psychological treatment on a person without his consent, and without his having been adjudged an offender, etc. This might be accomplished informally as a condition of probation. While the advisability of including this provision is questionable, it was thought that the best way to focus attention on the point was to include it in this discussion draft.
67. (3) For the purposes of subsection (1), the judge may order that the child be kept in detention for a period of 10 days.	Recommendation 6 of the "Proposals for Probation" (Canadian Corrections Association) deals with this point. The ten day limitation period is purely arbitrary.

.....

MEDICAL, etc. REPORTS

TEXT	EXPLANATORY NOTES
CONFIDENTIALITY	
67. (4) All reports received by the court pursuant to subsection (1) shall be disclosed to the counsel of the child or young person who is the subject of such reports, and, if the child or young person is represented by a person other than legal counsel, that person, even if he be a parent of the child or young person, shall be permitted to see such reports if he so requests, and the counsel or other person appearing with the child or young person shall have an opportunity to cross-examine any person who has submitted a report based on an examination conducted pursuant to subsection (1).	That part of this provision providing for the disclosure of the report is in accordance with recommendation 62 of the Report. The point is discussed in paragraphs 281 and 283. The Committee contemplated that the counsel of the child or young person would use his discretion in deciding how much of the information should be revealed to the child or his parents.

....

MEDICAL OBSERVATION

TEXT	EXPLANATORY NOTES
MEDICAL OBSERVATION IN CUSTODY	
68. A judge who has received an information with respect to any child or young person pursuant to section 20, may, at any time the child or young person is before him, remand the child or young person, by order in writing, to such custody as the judge directs for observation for a period not exceeding 30 days where, in his opinion, supported by the evidence of at least one duly qualified medical practitioner, there is reason to believe that the child or young person is mentally ill.	Adapted from section 451(c)(i) of the Criminal Code. At page 15 of the Report from the Couchiching Conference appears the following statement: "In cases of children who are so disturbed that they require observation of a nature that is not adequate in the regular detention setting, some provision should be made to recommend that the observation wards of hospitals be used for detention. Similarly, there is provision in the Criminal Code for adults to be placed in hospitals for treatment by the Court, but there is no such provision for juveniles. As a result some children who need psychiatric treatment in a hospital setting are sent home or sent to a training school when either may be extremely detrimental to the child."

....

MENTAL ILLNESS AT TIME OF TRIAL

TEXT	EXPLANATORY NOTES
69. (1) A judge who has received an information with respect to any child or young person pursuant to section 20, may, at any time before he has adjudged the information to have been proved, or before he has dismissed it, where it appears that there is sufficient reason to doubt that the accused is, on account of mental illness, capable of conducting his defence, direct that an issue be tried whether the accused is then, on account of his mental illness, unfit to stand the hearing of the charges against him.	Adapted from section 524 of the Criminal Code.
(2) The judge shall thereupon try the issue and render a finding thereon.	

MENTAL ILLNESS AT TIME OF TRIAL

TEXT

EXPLANATORY NOTES

69. (3) Where the finding is that the child or young person is not unfit on account of mental illness to stand the hearing of the charges against him, the judge shall proceed as if no such issue had been directed.

(4) Where the finding is that the child or young person is unfit on account of mental illness to stand the hearing of the charges against him, the judge shall order that the child or young person be kept in detention until the pleasure of the Lieutenant-Governor is known, and any plea that has been pleaded shall be set aside.

(5) No proceeding pursuant to this section shall prevent the child or young person from being proceeded against subsequently.

....

PROBATION OFFICERS

TEXT	EXPLANATORY NOTES
70. Every probation officer duly appointed under the provisions of this Act or of any provincial statute has in the discharge of his or her duties as such probation officer all the powers of a constable, and shall be protected from civil actions for anything done in bona fide exercise of the powers conferred by this Act.	Present Section 30.

....

PROBATION OFFICERS

TEXT	EXPLANATORY NOTES
71. It is the duty of a probation officer to make such investigation as may be required by the court, to be present in court, to furnish to the court such information and assistance as may be required, and to take such charge of any child or young person, before or after trial, as may be directed by the court.	Present Section 31. The provision concerning the presence of the probation officer "in order to represent the interests of the child where the case is heard" has been omitted, in view of the remarks of the Committee in paragraph 247, where, when speaking of the case presented for the child by the probation officer, the Committee quoted this provision with disapproval, saying, "The probation officer's primary responsibility is to the court, not to the child", and "experience has shown that one person should not be expected to perform inconsistent functions". The provision contained in this Act according to which a child or young person may be represented by counsel, or assisted by a parent, takes the place of the deleted provision of section 31. In paragraph 303(3) of the Report, the Committee specifically mentioned the responsibilities of the probation officer: pre-sentence investigation, and personal supervision of the child, by way of immediate supervision or as aftercare.

....

PROBATION OFFICERS

TEXT	EXPLANATORY NOTES
71. (Cont'd)	These duties are covered in this draft, with the exception of provisions concerning aftercare. Duties concerning aftercare have been purposefully excluded in the present draft from the functions of the juvenile court. There may be debate on this point.

PROBATION OFFICERS

TEXT	EXPLANATORY NOTES
72. Every probation officer however appointed is under the control and subject to the direction of the judge of the court with which such probation officer is connected, for all purposes of this Act.	Present Section 32.

....

PROBATION OFFICERS

TEXT	EXPLANATORY NOTES
73. Where no probation officer has been appointed under provincial authority, and remuneration for a probation officer has been provided by municipal grant, public subscription or otherwise, the court shall appoint one or more suitable persons as probation officers.	This is the present section 29, with the omission of the words "with the concurrence of the Juvenile Court Committee". It is reproduced here for discussion purposes, and can be either retained or dropped.

.....

EVIDENCE

TEXT

74. For the purposes of this Act a person shall be deemed to have been of a given age where the anniversary of his birthday, the number of which corresponds to that age, is fully completed, and until then to have been under that age.

EXPLANATORY NOTES

This provision is taken word for word from section 3(1) of the Criminal Code.

Section 25 of the new Interpretation Act (assented to July 7, 1967) is as follows:

"(9) A person shall be deemed not to have attained a specified number of years of age until the commencement of the anniversary, of the same number, of the day of his birth."

Section 74 of the discussion draft is redundant, in view of section 25(9) of the new Interpretation Act. It could be omitted.

....

EVIDENCE

TEXT	EXPLANATORY NOTES
75. (1) In any proceedings to which this Act applies the production of a birth certificate or a copy thereof purporting to be in the name of the child or young person and purporting to be certified under the hand of the proper officer or person in whose custody the records are held, or an entry or record of an incorporated society or its officers who have had the control or care of a child or young person at or about the time the child or young person was brought to Canada is prima facie evidence of the age of the child or young person, if the entry or record was made before the time when the offence is alleged to have been committed.	Recommendation 57. "The law should make adequate provision for a clear and simple method of proving the age of a child or young person who is before the juvenile court". The second part of 75(1) is taken from 565(1) of the Criminal Code. Section 24 of the Canada Evidence Act would apply. This section negates the necessity of seals and signatures on certified documents.
75. (2) Section 28 of the Canada Evidence Act does not apply to this section.	That section requires that the party producing a copy of a document must give notice that he intends to do so.

....

EVIDENCE

TEXT	EXPLANATORY NOTES
76. In the absence of other evidence, or by way of corroboration of other evidence, a judge of a juvenile court may infer the age of a child or young person from his appearance.	This paragraph is taken from section 565(2) of the Criminal Code.

EVIDENCE

TEXT

EXPLANATORY NOTES

77. (1) Service of any document pursuant to this Act, may be proved

(a) where service thereof has been made by a peace officer or other person designated by the judge, by the oral evidence, given under oath, of such peace officer or other person, or by his affidavit sworn before any commissioner or other person authorized to take affidavits;

(b) where service thereof may be made by mail, by oral evidence under oath, or by an affidavit, sworn before any commissioner or other person authorized to take affidavits, of the officer of the court whose duty it is to send such documents, setting out that the document was sent by mail on a named date to the person to whom it was directed, and identifying a true copy of such document.

Adapted from section 26(3) of the Canada Evidence Act.

....

EVIDENCE

TEXT	EXPLANATORY NOTES
77. (2) Where proof is offered by affidavit pursuant to this section, it is not necessary to prove the official character of the person making the affidavit if that information is set out in the body of the affidavit.	Section 26(4) of the Canada Evidence Act.

TEXT	EXPLANATORY NOTES
CHILD'S OATH MAY BE DISPENSED WITH	
78. (1) When in a proceeding before a juvenile court a child of tender years who is called as a witness does not, in the opinion of the judge, understand the nature of an oath, the evidence of such child may be received, though not given under oath, if, in the opinion of the judge, such child is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth.	Present section 19(1) of the Juvenile Delinquents Act; identical to section 16(1) of the Canada Evidence Act.
78. (2) No case shall be decided upon such evidence alone, and it must be corroborated by some other material evidence.	The wording of present section 19(2) of the Juvenile Delinquents Act is not reproduced because it states that "no person shall be convicted". Such a wording is not adequate in view of the fact that it would apply to adult trials only where conviction may be made under the proposed Act. It would create difficulties as to proceedings against children and young persons, since there is no conviction in such cases. The wording of present section 16(2) of the Canada Evidence Act has been adopted instead, word for word.

....

EVIDENCE

TEXT	EXPLANATORY NOTES
79. It is not necessary to its validity that any seal should be attached or affixed to any information, summons, warrant, conviction order, or other process or document filed, issued or entered in any proceeding had or taken under this Act.	Present section 18 of the Juvenile Delinquents Act.

APPEAL

TEXT

80. (1) The Attorney General, or any child or young person concerning whom a decision has been made by a juvenile court judge, may appeal to the court of appeal upon any ground that involves a question of law alone, or, with leave of the court of appeal or a judge thereof, upon any ground that appears to that court to be a sufficient ground of appeal.

EXPLANATORY NOTES

Recommendation 60 states:

"The Crown and the accused should have a direct right of appeal to the court of appeal on any ground of appeal that involves a question of law alone and, with leave of the court of appeal, on any other ground that appears to the court to be sufficient."

In paragraphs 273 to 275, the Committee explained that it was of the opinion that the present appeal provisions, contained in section 37 of the present Act, were too restricted. The appeal allowed is to a supreme court judge, who, in his discretion, may refuse leave to appeal; there is no appeal as of right.

As a comment on its recommendation on the question of appeal, the Committee stated, at the end of paragraph 275:

"Adoption of the scheme we propose would permit important questions of law to be decided by the one tribunal whose pronouncements apply throughout the province. It would help to ensure that the juvenile court performs its proper role:

....

APPEAL

TEXT	EXPLANATORY NOTES
80. (1) (Cont'd)	the administration of a system of individualized justice according to law." Special appeal provisions are found in the Combines Investigation Act, which is also a special criminal statute. Sections 31(2a),(2b) and (2c) provide for appeals against orders of prohibition. Section 31(2a) provides for the appeal to the appropriate court and continues, "..upon any ground that involves a question of law, or, if leave to appeal is granted by the court appealed to within twenty-one days after the judgment appealed from is pronounced or within such extended time as the court appealed to or a judge thereof for special reasons allows, on any ground that appears to that court to be a sufficient ground of appeal."
80. (2) The Attorney General or any child or young person concerning whom a decision has been made by a juvenile court judge, may appeal from a decision of the court of appeal to the Supreme Court of Canada on any question of law upon which a judge of the court of appeal dissents, or on any question of law if leave to appeal is granted by the Supreme Court of Canada.	This sub-section follows generally the provisions of section 597 and 598 of the Criminal Code relating to appeals to the Supreme Court of Canada in indictable cases.

....

APPEAL

TEXT	EXPLANATORY NOTES
80. (3) Subject to sub-section (1), the provisions of Part XVIII of the Criminal Code apply mutatis mutandis to appeals under this section.	The Committee made no recommendation with respect to procedure in appeals. Part XVIII of the Criminal Code is that part which deals with "appeals - indictable offences". Section 37(1) of the present Act includes the following provision: "....and the provisions of the Criminal Code relating to appeals from conviction on indictment apply to such appeal, save that the appeal shall be to a supreme court judge instead of to the court of appeal, with a further right of appeal to the court of appeal by special leave of that court." Section 31(2c) of the Combines Investigation Act, referred to above, provides as follows: "Subject to sub-section (2a) and (2b), the provisions of Part XVIII of the Criminal Code apply mutatis mutandis to appeals under this section." This provision has been adopted in this discussion draft. It was drafted in 1960 and represents a more recent approach to the problem than does section 37 of the Juvenile Delinquents Act.

....

APPEAL

TEXT	EXPLANATORY NOTES
80. (3) (Cont'd)	Part XVIII of the Criminal Code includes sections 581 to 601. One possible difficulty is foreseen: the sections in Part XVIII refer to "convictions" (e.g. section 592), and, "A person who is convicted of an indictable offence" (section 597, referring to appeals to the Supreme Court of Canada). There is really no "conviction" under the Children and Young Persons Act. The judgment or decision of the court is referred to as an "adjudication", and the court would find the child or young person a "violator", a "child offender", or a "young offender". It is considered that this situation is covered by the expression "mutatis mutandis". See section 81(2) of this discussion draft.

....

EFFECTS OF ADJUDICATION

TEXT

CIVIL EFFECTS OF ADJUDICATION

81. (1) Where a child or young person has been adjudged a "violator", a "child offender", or a "young offender", as the case may be, he shall not be regarded as having been convicted of a criminal offence for the purpose of determining whether he has a previous conviction, or is otherwise subject to disabilities by reason of conviction for a criminal offence, and he may reply accordingly to any inquiry concerning previous convictions.

EXPLANATORY NOTES

Recommendation 13 states that:
"The law should make clear that a finding that a person is a 'child offender' or 'young offender' is not to be regarded as a conviction for a 'criminal offence' for the purpose of determining whether a person has a previous conviction or is otherwise subject to disabilities by reason of conviction for a criminal offence".
The last sentence in paragraph 150 of the Report is exactly the same, except that it begins, "The statute should make clear". The last clause, "and he may reply accordingly to any inquiry concerning previous convictions", was not part of the recommendation. This clause and the similar provision concerning the sealing of records (below) are sometimes criticized as providing for a "legalized prevarication", which presents a quandary to the lawmakers. Aidan R. Gough, in his article entitled, "The Expungement of Adjudication Records of Juvenile and Adult Offenders:A Problem of Status", put it this way, at page 189 of his article:

....

EFFECTS OF ADJUDICATION

TEXT

81. (1) (Cont'd)

EXPLANATORY NOTES

".....In commending Governor Rockefeller's veto of the New York Bill, The District Attorney of Manhattan is reported to have said that the bill was unrealistic because 'it permitted a person to lie about his former conflict with the law'. It is perhaps hard to articulate but there is - to the writer's mind, at least - something objectionable about legalized prevarication even though one can rationalize the point by the worthiness of the end.
It impairs the law's integrity by creating a fiction where none is needed. To only allow the offender to deny his offence leaves the burden on him; to restrict the questioning about his offence places the focus where it belongs, on the attitudes of society".

This section should be considered together with section 82. The two sections are really alternative approaches to the same issue. On the whole, it is submitted that section 82 is preferable, since it does not involve "legalized prevarication", and since, in the words of Gough,

....

EFFECTS OF ADJUDICATION

TEXT	EXPLANATORY NOTES
81. (1) (Cont'd)	"To only allow the offender to deny his offence leaves the burden on him; to restrict the questioning about his offence places the focus where it belongs, on the attitudes of society." Section 654 of the Criminal Code, dealing with the civil disabilities of convicted persons, is an example of this kind of legislation being included in a criminal statute. Of course section 81 has a broader application than section 82.
81. (2) Notwithstanding sub-section (1), where a child or young person has been adjudged a "violator", or "child offender", or a "young offender" under this Act, such adjudication shall be deemed a conviction where provisions in the Criminal Code are made to apply mutatis mutandis to this Act.	The procedure in the case of appeals is to be that contained in Part XVIII of the Code, i.e., the procedure in appeals in indictable cases. The word "conviction" is, of course, used in this Part. See section 80(3) of this draft.

....

EFFECTS OF ADJUDICATION

TEXT

EMPLOYERS - FORBIDDEN QUESTIONING

82. (1) It is unlawful for any employer engaged upon or in connection with the operation of any work, undertaking, or business that is within the legislative authority of the Parliament of Canada to question any applicant for employment, or any of his referees, on any matter concerning the arrest of such applicant relating to proceedings under this Act, or on any other matter concerning such applicant with respect to proceedings under this Act.

EXPLANATORY NOTES

Recommendation 84 concerns this point and is as follows:

"Employers who are subject to Parliament in respect of employment practices should be prohibited from questioning an applicant for employment or his referees on the question whether he has been found delinquent during his childhood."

In paragraph 342, the Committee stated as follows:

"If it were thought to be desirable not to prejudice a person's employment opportunities because of his juvenile court record the remedy would appear to be this: an employer should be prohibited from questioning an applicant or his referees on that matter. The law already has the example of fair employment practices legislation which prohibits questions relating to race or religion. However, it is debatable whether such a prohibition by Parliament in the Act could constitutionally apply to employers other than those subject to Parliament in respect of employment practices. We recommend, in any event, that such federal legislation be introduced for enactment by Parliament."

....

EFFECTS OF ADJUDICATION

TEXT

82. (1) (Cont'd)

EXPLANATORY NOTES

The Committee then went on to say that it did not think the problem could ever be solved by legislation. In drafting this provision, the Canada Labour (Standards) Code, Ch.38, 13-14 Elizabeth II was looked at. The words "employer" and "employee" used in that Act are defined generally in section 2(d) and (c); however, section 3(1), concerning the application of the Act, reads as follows:

"This Act applies to and in respect of employees who are employed upon or in connection with the operation of any work, undertaking or business that is within the legislative authority of the Parliament of Canada....."

The Canada Labour Code, however, stands in a different constitutional light from the present draft Act. Since the Code deals with labour and not with crime, the jurisdiction of Parliament is limited to federal works and undertakings. The present draft Act, on the other hand, relates to the criminal law over which Parliament has express jurisdiction under head 27 of section 91 of the British North America Act.

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EFFECTS OF ADJUDICATION

TEXT	EXPLANATORY NOTES
82. (1) (Cont'd)	Section 82 creates a criminal offence in the context of a criminal enactment, and the qualification suggested by the Committee, and incorporated in section 82(1) of the discussion draft, is likely unnecessary and can be omitted. Section 367(a) of the Criminal Code, which makes it an offence for an employer to refuse to emply a member of a trade union, is an example in point. The issue is a complex one because widespread employment practices are involved. An employer has ordinarily the right to require an educational and employment history from an applicant for employment and the applicant is often requested to state the places where he worked or attended school: the fact that an applicant was committed to training school is likely to be revealed by such a history.
82. (2) Everyone who contravenes this section is guilty of an offence punishable on summary conviction.	

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RECORDS

TEXT	EXPLANATORY NOTES
FINGERPRINTS AND PHOTOGRAPHS 83. (1) The Identification of Criminals Act shall not apply to any child or young person who is apprehended by the police, unless the judge so orders.	The Report contains no recommendation or discussion on this subject. Most of the American legislation, or models thereof, studied have a provision similar to this. Examples are: Standard Family Court Act Section 33 ..... "Without the consent of the judge neither the fingerprints nor a photograph shall be taken of any child taken into custody, unless the case is transferred for criminal proceedings." OREGON 419.585 "Neither the fingerprints nor a photograph of a child taken into custody for any purpose under ORS. 419.472 to 419.587 shall be taken except in the following circumstances: (1) With the consent of the juvenile court; or (2) Where a child has been remanded to the court handling criminal actions; or (3) Where a child has been placed in the legal custody of a state institution".

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RECORDS

TEXT	EXPLANATORY NOTES
83. (1) (Cont'd)	Kansas Statutes Annotated - Supplement - 1965 - Juvenile Code 38.815. "(f) Neither the fingerprints nor a photograph shall be taken of any child less than eighteen (18) years of age, taken into custody for any purpose, without the consent of the judge of the court having jurisdiction; and when the judge permits the fingerprinting of any such child, the prints shall be taken as a civilian and not as a criminal record".

RECORDS

TEXT	EXPLANATORY NOTES
FINGERPRINTS AND PHOTOGRAPHS	
83. (2) Sub-section (1) shall not apply where the judge has waived his jurisdiction with respect to a young person pursuant to section 53 of this Act, or where a young person or the Attorney General has required that the young person be tried in the ordinary court pursuant to section 52 of this Act.	The purpose of this sub-section is to make a young person who is being tried in an adult court subject to all the procedures applicable to adult cases. Section 427 of the Criminal Code, however, provides that the trial of a person under 16 years of age shall take place without publicity. (This section should be amended to refer to persons under 17).

RECORDS

TEXT	EXPLANATORY NOTES
CONTENTS OF RECORD 84. The clerk of the court shall keep a record of each case, which shall include the warrant, summons, information, any report, notices, transcripts, and all other documents and papers originating with the court and pertaining to the proceedings in the case.	The pre-disposition report is now, by a separate subsection, made part of the record, as recommended in the case of adults in the "Proposals for Probation", submitted by the Canadian Corrections Association. The reason for this proposal was to ensure that the report would be considered to be part of the record, and therefore subject to the same protection against disclosure as the record. The provisions overlap to that extent. The Oregon Statute, in section 419.567, excludes these reports in the following words: "....but excluding reports and other material relating to the child's history and prognosis". The same section in the Oregon Statute defines the composition of the records as follows: "The clerk of the court shall keep a record of each case, including therein the summons and other process, the petition and all other papers in the nature of pleadings, motions, orders of the court and other papers filed with the court, ..." ....

RECORDS

TEXT

84. (Cont'd)

EXPLANATORY NOTES

The subject of juvenile court records is dealt with in the Report in Recommendation 85, and paragraph 343.

Recommendation 85 states:

"Juvenile court records should be available for use in disposing of a case against an individual who, having a juvenile court record, is subsequently convicted of an offence in the adult court".

In paragraph 343, the Committee discussed the different considerations with regard to making a juvenile court record available to prospective employers and to a court; however, its only recommendation concerning records was that quoted above. (Recommendation 85).

Section 574 of the Criminal Code now provides for the method of proving a previous conviction, which may be proved either by producing a certificate or a copy of the conviction only.

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RECORDS

TEXT	EXPLANATORY NOTES
RECORDS - Confidential 85. The record in any case shall be kept separate from the records of adults and shall be withheld from public inspection, but shall be open to inspection by the child or young person who is the subject of the record, by the counsel or the parents or guardian of such child or young person, by any counsel appointed by the Attorney General, by any other juvenile court judge upon subsequent adjudication, or by any court upon subsequent conviction, for the purpose of making a disposition or passing a sentence, and, with the consent of the judge, by persons, institutions and agencies having a legitimate interest in the supervision or treatment of such child or young person, or by persons having a legitimate interest in the work of the court.	There is no recommendation in the Report to cover this provision. If the pre-disposition report is considered part of the record, there is a discrepancy. It is, in another provision, to be available to the child or young person only at the discretion of the judge. In the provision opposite, the record is available as of right to the child or young person. Most of the American legislation, and models thereof, studied have a provision concerning the confidentiality of juvenile court records. Section 33 of both the Standard Juvenile Court Act and the Standard Family Court Act provides as follows: "These records shall be open to inspection by the parties and their attorneys, by an institution or agency to which custody of a child has been transferred, by an individual who has been appointed guardian; with the consent of the judge, by persons having a legitimate interest in the proceedings; and, pursuant to rule or special order of the court, by persons conducting pertinent research studies, and by

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RECORDS

TEXT	EXPLANATORY NOTES
85. (Cont'd)	persons, institutions, and agencies having a legitimate interest in the protection, welfare, or treatment of the child".
	Section 827 of the Californis Code is as follows:
	"A petition filed in any juvenile court proceeding and any reports of the probation officer filed in any such case may be inspected only by court personnel, the minor who is the subject of the proceeding, his parents or guardian, and the attorneys for such parties, and such other persons as may be designated by the judge of the juvenile court".

....

RECORDS

TEXT	EXPLANATORY NOTES
RECORDS - Sealing 86. (1) In any case where an information has been received by a juvenile court judge with respect to any person under this Act, such person may, five years or more after the jurisdiction of the juvenile court judge has terminated with respect to such person, or five years or more after such person has been released from a training school where he has been placed as a result of the adjudication and disposition with respect to an information received by a juvenile court judge, bring a motion before that juvenile court judge requesting the sealing of the records relating to his case, including the records of the court, records of arrest, and any other records in the custody of persons, agencies, or public officials, including law enforcement agencies, whom the person alleges in his notice of motion to have custody of such records.	This section has been included here for discussion purposes only. It is submitted that, in view of section 85 providing for the confidentiality of records, it is not necessary. There is no specific recommendation concerning the expunging or sealing of records. In paragraph 343, the Committee did discuss the desirability of barring prospective employers from inspecting the records of juveniles. With regard to the draft of this provision, section 781 of the California Juvenile Court Law has been used as a precedent. The first part of section 781, comparable to the provision opposite, is as follows: "In any case in which a petition has been filed with a juvenile court to commence proceedings to adjudge such person a dependent child or ward of the court or in any case in which a person is cited to appear before a probation officer or is taken before a probation officer pursuant to section 626, such person, or the county probation officer, may, five years or more after the jurisdiction

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RECORDS

TEXT	EXPLANATORY NOTES
86. (1) (Cont'd)	of the juvenile court has terminated as to such person, or in a case in which no petition is filed, five years or more after such person was cited to appear before a probation officer or was taken before a probation officer pursuant to section 626, petition the court for sealing of the records, including records of arrest, relating to such person's case, in the custody of the juvenile court and probation officer and such other agencies, including law enforcement agencies, and public officials, as petitioner alleges, in his petition, to have custody of such records".

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RECORDS

TEXT	EXPLANATORY NOTES
RECORDS - Sealing	
86. (2) Where a juvenile court judge receives a notice of motion pursuant to sub-section (1), he shall notify the crown attorney of the territorial jurisdiction in which he is located, a probation officer, and any other person having evidence relevant to the matter, and he shall set a date for the hearing of the motion to determine whether the person making the motion has, since the termination of the court's jurisdiction with respect to such person, or since the release of such person from training school, been found to be a child offender or a young offender within the meaning of this Act, or has been convicted of any indictable or summary conviction offence under any other Act, and whether such person has lived a law abiding life to the satisfaction of the judge.	The corresponding part of section 781 of the California law is as follows: "The court shall notify the district attorney of the county and the county probation officer, if he is not the petitioner of the petition, and such district attorney or probation officer or any of their deputies or any other person having relevant evidence may testify at the hearing on the petition".

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RECORDS

TEXT	EXPLANATORY NOTES
RECORDS - Sealing 86. (3) If, after a hearing held pursuant to subsection (2), the juvenile court judge is satisfied that the person who brought the motion is living a law abiding life and has been rehabilitated, the juvenile court judge shall order sealed all records, papers, and exhibits relating to such person that are in the custody of the juvenile court, and all other records relating to such person that are in the custody of such other persons, agencies and officials as are named in the order.	The corresponding part of section 781 of the California law is as follows: "If, after hearing, the court finds that since such termination of jurisdiction or action pursuant to section 626, as the case may be, he has not been convicted of a felony or of any misdemeanor involving moral turpitude and that rehabilitation has been attained to the satisfaction of the court, it shall order sealed all records, papers, and exhibits in such person's case in the custody of the juvenile court, including the juvenile court record, minute book entries, and entries on dockets, and other records relating to the case in the custody of such other agencies and officials as are named in the order".

....

RECORDS

TEXT	EXPLANATORY NOTES
RECORDS - Sealing	
86. (4) After an order has been made pursuant to sub-section (3), the proceedings with respect to which the order is made shall be deemed never to have occurred, and such person may reply accordingly to any inquiry concerning the proceedings with respect to which the records have been ordered sealed.	The corresponding part of section 781 of the California law is as follows: "Thereafter the proceedings in such case shall be deemed never to have occurred, and such person may properly reply accordingly to any inquiry about the events, records of which are ordered sealed". For a discussion concerning "legalized prevarication", see the note opposite section 81(1) of this draft.

RECORDS

TEXT	EXPLANATORY NOTES
RECORDS - Sealing	
86. (5) The juvenile court judge shall send a copy of the order to each person, agency and official named in the order, and each such person, agency, and official shall seal the records in his or its custody, as directed by the order, and shall advise the court of his or its compliance, and shall seal the copy of the court's order for the sealing of records that he or it received.	The corresponding part of section 781 of the California law is as follows: "The court shall send a copy of the order to each agency and official named therein, and each such agency and official shall seal records in its custody as directed by the order, shall advise the court of its compliance, and thereupon shall seal the copy of the court's order for sealing of records that it or he received".

RECORDS

TEXT	EXPLANATORY NOTES
RECORDS - Sealing	
86. (6) Any person who receives an order pursuant to sub-section (5) may be adjudged in contempt of court if he refuses or fails to comply with such order within a reasonable time after receiving such order.	Section 38-815(h) of the Kansas Statutes Annotated - Supplement 1965 - after providing for the expunging of records, provides: ".....and, if he shall refuse or fail to do so within a reasonable time after receiving such order, he may be adjudged in contempt of court and punished accordingly". There is no provision concerning contempt in the California law.

RECORDS

TEXT	EXPLANATORY NOTES
RECORDS - Sealing 86. (7) The person who is the subject of records sealed pursuant to this section may apply to the superior court of criminal jurisdiction for an order that a named person be permitted to inspect the records sealed pursuant to this section, and the superior court of criminal jurisdiction may so order, but otherwise such records shall not be open to inspection.	The corresponding part of section 781 of the California law is: "The person who is the subject of records sealed pursuant to this section may petition the superior court to permit inspection of the records by persons named in the petition, and the superior court may so order. Otherwise such records shall not be open to inspection". Aidan R. Gough, in his article entitled, "The Expungement of Adjudication Records of Juvenile and Adult Offenders: A Problem of Status" comments on this provision as follows: "The statute uniquely provides that the person whose records are sealed may at a later time petition the court to grant the right of inspection to persons named in the application, apparently to effectuate security clearances and other investigations for high risk employment".

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RECORDS

TEXT	EXPLANATORY NOTES
RECORDS - Sealing 86. (8) An application to a superior court of criminal jurisdiction made pursuant to subsection (7) shall be made in the manner directed by the rules of that court.	The sealing and expungement of records is discussed in the article by Aidan R. Gough, mentioned above, which was published in the Washington University Law Quarterly, Vol. 1966, No. 2, April 1966, p. 147-190, and was reprinted by the Children's Bureau in Washington. This subject is also discussed at pages 286 to 289 of the Note in the Columbia Law Review of February 1967, vol. 67, No. 2. It is of interest to note the recommendations concerning juvenile court records contained in the Report of the Ontario Legislature's Select Committee on Youth, released in March 1967. They are as follows, at page 273 of the Report: "The Select Committee recommends that: 248. The use of juvenile records in adult courts be kept to an absolute minimum, consistent with the principle that juvenile court charges or appearances should not influence the sentencing process in adult courts.

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RECORDS

TEXT

86. (8) (Cont'd)

EXPLANATORY NOTES

249. Under no circumstances should juvenile records be revealed to any business agencies for the use of employer personnel or credit purposes. That any persons using such information for any such purpose should be punishable by law.

250. Juvenile records be expunged after five years of delinquent free behaviour".

The Committee did not discuss possible methods of accomplishing this end.

SAFEGUARDS

TEXT

INCARCERATION IN ADULT INSTITUTIONS

87. (1) Subject to subsection (2), no child or young person shall be committed to a penal institution where adult prisoners are confined.

EXPLANATORY NOTES

With regard to this matter, the Fauteux Report commented as follows (at page 27):

"Young Offenders

It is an astonishing fact that under the present law in Canada, it is possible for a child under the age of sixteen to be convicted of a criminal offence in an adult court and be sentenced to a lengthy term of imprisonment in a penitentiary. This can happen in any of the many areas where the Juvenile Delinquents Act is not in force. Some provincial authorities have been authorized by the Prisons and Reformatories Act to make limited efforts to deal with this class of offender but the situation in Canada is, however, far from satisfactory.

The report of the Commissioner of Penitentiaries for the fiscal year ending March 31, 1955, discloses that during that year 14 persons under the age of sixteen years were admitted to Canadian penitentiaries. Such a situation is permitted by the penal system of Canada. In our opinion legislative changes are needed

...

TEXT	EXPLANATORY NOTES
87. (1) (Cont'd)	immediately to provide that no person under the age of sixteen years shall be committed to penal institutions where adult prisoners are confined, and we recommend accordingly".

• • • •

SAFEGUARDS

TEXT	EXPLANATORY NOTES
87. (2) Subsection (1) does not apply where a judge of a juvenile court has made an order pursuant to section 53(1)(a) of this Act in respect of a young person over the age of sixteen years.	The criterion for the waiver of jurisdiction to an adult court for both trial and sentence is that the young person is not suitable for treatment in any institution available to young offenders, or that the offender should continue under restraint for a period longer than the juvenile court is authorized to order. (Recommendation 16). Implied in this criterion is the idea that the young offender would not be suitable for custody in any place other than an institution for adult prisoners. This section leaves hanging the question of the institutions to which are to be sent young persons under the age of sixteen who have been waived to the adult court for both trial and sentence.

LEGAL RELATIONSHIPS

TEXT	EXPLANATORY NOTES
88. A foster parent or any other person with whom a child or young person has been placed by a juvenile court judge under the provisions of this Act has the right to the physical possession of the child or young person, and the right and duty to provide for the care, protection, training and education, and the physical, mental and moral welfare of the child or young person, subject to such conditions and limitations as the order of the juvenile court judge may contain, and to the remaining rights and duties of the parents of such child or young person.	The Committee made no specific recommendation concerning the legal relationship between foster parent, court and natural parent; however, it did refer to the fact that a problem did exist in this area. This reference is contained in paragraph 309 of the Report, which is as follows: "Placing a child in a foster home does not terminate the guardian rights of his natural parents. Some private child-care agencies have refused to accept placements from juvenile courts for this reason. We do not understand why they should take this position. The same agencies undertake to care for other children over whom they do not have rights of guardianship, that is, children who are neglected or dependent. We recognize, however, that there may be ambiguities in the matter of the relationship between foster parent, court and natural parent. Such ambiguities should be eliminated in any new legislation." While the Committee stated that "such ambiguities should be eliminated in any new legislation", it gave no guidance in the matter.

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LEGAL RELATIONSHIPS

TEXT	EXPLANATORY NOTES
88. (Cont'd)	Reference is now made to section 25 of the First Tentative Draft of the Uniform Juvenile Court Act, which reads as follows: "Rights and duties of legal custodian. A custodian, to whom legal custody has been given by the court under this Act, has the right to the physical possession of the child and the right and duty to provide for the care, protection, training and education, and the physical, mental and moral welfare of the child; subject to such conditions and limitations as the order may contain, and to the remaining rights and duties of the child's parents or guardian." In the Standard Juvenile Court Act, 1959, "legal custody" has been defined to mean: "....the relationship created by the court's decree which imposes on the custodian the responsibility of physical possession of the child and the duty to protect, train and discipline him and to provide him with food, shelter, education, and ordinary medical care, all subject to residual parental rights and responsibilities of the guardian of the person." ....

FINANCIAL LIABILITY OF MUNICIPALITIES AND PARENTS

TEXT	EXPLANATORY NOTES
89. Whenever a juvenile court judge makes an order under this Act committing a child or young person to an institution, or placing a child or young person in a foster home, group home, or other shelter facility, where, if he had made such an order pursuant to the child welfare legislation of the province in which such order is made, he could have made an order requiring the parents of such child or young person, or the municipality in which such child or young person resides, to contribute to the support of such child or young person, he may make an order requiring the parents of such child or young person, or the municipality where such child or young person resides, to contribute to the support of such child or young person on such terms and conditions as he could order under the child welfare legislation of that province, and, in such case, and for such purposes, the relevant provisions and definitions of the provincial legislation shall be applied.	Section 20(2) of the Juvenile Delinquents Act provides that, "In every such case" (referring to the disposition measures) "it is within the power of the court to make an order upon the parent or parents of the child, or upon the municipality to which it belongs, to contribute to its support such sum as the court may determine, and where such order is made upon the municipality, the municipality may from time to time recover from the parent or parents any sum or sums paid by it pursuant to such order". This section has been declared intra vires the power of the federal Parliament. (See Re Dunne [1962] O.R. 595, a decision of Schatz, J., of the Ontario High Court). In paragraphs 337 to 339 of the Report, the Committee stated that section 20(2) had created problems in administration, and was generally not as satisfactory as the provisions for payment under the provincial welfare legislation.

....

FINANCIAL LIABILITY OF MUNICIPALITIES AND PARENTS

TEXT	EXPLANATORY NOTES
89. (Cont'd)	The Committee recommended that: "Some method should be found whereby the relevant provisions of the provincial legislation relating to the financial liability of parents and municipalities would come into effect whenever an order for support is made by the juvenile court pursuant to federal law". (Recommendation 83).

RELIGIOUS CONSIDERATIONS

TEXT	EXPLANATORY NOTES
90. (1) No Protestant child dealt with under this Act shall be committed to the care of any Roman Catholic children's aid society or be placed in any Roman Catholic family as its foster home; nor shall any Roman Catholic child dealt with under this Act be committed to the care of any Protestant children's aid society, or be placed in any Protestant family as its foster hime; but this section does not apply to the placing of children in a temporary home or shelter for children, established under the authority of a statute of the province, or, in a municipality where there is but one children's aid society, to such children's aid society.	This is the present section 23 of the Juvenile Delinquents Act. If any more flexible provision is desired, this can be considered a matter for discussion. The Illinois Juvenile Court Act provides as follows: Section 5-7 sub-section (2) "When making such placement, the court, whenever possible, shall select a person holding the same religious belief as that of the minor or a private agency controlled by persons of like religious faith of the minor. In addition, whenever alternative plans for placement are available, the court shall ascertain and consider, to the extent appropriate in the particular case, the views and preferences of the minor." The California Juvenile Court Law is more rigid, and provides as follows: "All commitments to institutions or for placement in family homes under this chapter shall be, so far as practicable, either to institutions or for placement in family homes of the same religious belief as that of the person so committed or of his parents or to institutions affording opportunity for instruction in such religious belief." ????

RELIGIOUS CONSIDERATIONS

TEXT	EXPLANATORY NOTES
90. (1) (Cont'd)	The Report contains no recommendation on this point.
90. (2) If a Protestant child is committed to the care of a Roman Catholic children's aid society or placed in a Roman Catholic family as its foster home or if a Roman Catholic child is committed to the care of a Protestant children's aid society or placed in a Protestant family as its foster home, contrary to the provisions of this section, the court shall, on the application of any person in that behalf, make an order providing for the proper commitment or placing of the child pursuant to subsection (1).	

/....

RELIGIOUS CONSIDERATIONS

TEXT

EXPLANATORY NOTES

90. (3) No child of a religious faith other than the Protestant or Roman Catholic shall be committed to the care of either a Protestant or Roman Catholic children's aid society or be placed in any Protestant or Roman Catholic family as its foster home unless there is within the municipality no children's aid society or no suitable family of the same religious faith as that professed by the child or by its family, and, if there is no children's aid society or suitable family of such faith to which the care of such child can properly be given, the disposition of such child is in the discretion of the court.

TRAFFIC OFFENCES

TEXT	EXPLANATORY NOTES
91. (1) The Lieutenant-Governor in Council of a province may appoint one or more persons of suitable experience among the justices of the peace or magistrates to serve as traffic hearing officers on a full time or part time basis.	The Committee stated that "the initial premise should be that, where practicable, juvenile traffic cases, excepting perhaps those that do not involve operation of a vehicle, should be heard in the Juvenile Court." The Committee noted also that "in larger communities the juvenile courts should be able to handle most juvenile traffic offenders." However, in recommendation 14, the Committee stated that cases of a routine kind should be dealt with, through rules of court, in separate hearings by designated officers without the formalities provided for hearings under this Act. Although they do not say so, the members of the Committee apparently contemplate a situation somewhat similar to that which prevails under the law of California, viz., the appointment of traffic hearing officers (California Juvenile Court Law, article 3, sections 561 to 568). In the view of the Committee, the purpose of appointing a traffic hearing officer would be to relieve the juvenile court from a burden that would divert it from its primary purpose. (Paragraph 154).

TRAFFIC OFFENCES

TEXT	EXPLANATORY NOTES
92. A traffic hearing officer may hear and dispose of any and all cases wherein a child or young person is charged with an act or omission under a provincial Highway Act or a municipal traffic by-law that is a violation under the present Act.	The proposed Act makes a distinction as to gravity between offences and violations. It is contemplated that specific provincial traffic offences should be offences under this Act and, as such, they should be designated in a schedule - e.g. careless driving offences, obtaining a drivers' permit while disqualified, etc. All other traffic offences under provincial Highway Acts or municipal by-laws should be classified as violations under this Act, e.g., illegal parking. The traffic hearing officer should have jurisdiction over violations only.

....

TRAFFIC OFFENCES

TEXT	EXPLANATORY NOTES
93. Any hearing pursuant to section 92 shall be conducted in accordance with the provincial law with respect to informations, summonses, arraignment, plea and generally the manner of conducting the hearing.	It is specifically suggested in paragraph 154 of the Report that formalities should be dispensed with in hearing routine cases. The application of the provincial provisions concerning the procedure in such cases would meet the above suggestion.

TRAFFIC OFFENCES

TEXT	EXPLANATORY NOTES
94. Upon a hearing pursuant to section 92, upon an admission by the child or young person of the commission of the traffic violation charged, or upon a finding that the child or young person did in fact commit such traffic violation, the traffic hearing officer may	See explanatory note opposite section 61 and see also paragraph 154 of the Report.
(a) reprimand the child or young person and take no further action;	
(b) direct that an information be laid as provided in section 20; or	The facts may disclose that the defendant should be dealt with as an offender or violator before the juvenile court judge, in which case a juvenile court should deal with him.
(c) make one or more of the following orders as may be provided by the provincial legislation	
(i) impose restrictions on the use of an automobile;	It is to be noted that this paragraph gives a traffic hearing officer such powers as may be exercised under provincial legislation.
(ii) suspend or revoke the driving licence;	
(iii) assess demerit points;	
(iv) impose a fine in the amount provided by the law creating the violation, but in no case shall such fine exceed the amount of $25.00.	

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TRAFFIC OFFENCES

TEXT	EXPLANATORY NOTES
95. (1) In territorial divisions where no traffic hearing officer has been appointed, the judge of the juvenile court may, with the approval of the Attorney General, issue a rule of court directing that all cases where a child or young person is charged with a traffic violation that constitutes a violation under this Act be heard by the ordinary court having jurisdiction over adults in like cases, subject to the following conditions,	Adapted from the Oregon Statute following a suggestion of the Committee (paragraphs 153 and 154). Recommendation 14 states that certain classes of cases should, in appropriate circumstances, be transferred to the ordinary courts. This recommendation is a derogation from the principle that the juvenile court should have jurisdiction over juvenile traffic cases, excepting perhaps those that do not involve operation of a vehicle. This derogation is, in the view of the Committee, justified only in regard to juvenile courts serving sparsely populated areas.
(a) that the ordinary court, before hearing a case, notify the juvenile court of the fact; and	The Statute of Oregon, O.R.S. ss. 419.533 to 419.541, (1959 c. 432), would be, in the words of the Committee "the most useful model for a provision defining generally the basis of juvenile court jurisdiction". This subsection gives the juvenile court judge, where no traffic hearing officer has been appointed, the authority, subject to the approval of the Attorney General, to issue a rule of court whereby jurisdiction is given to the ordinary courts over children and young persons having committed a
(b) that the juvenile court may direct that any such case be remanded to the juvenile court for further proceedings.	

.....

TRAFFIC OFFENCES

TEXT	EXPLANATORY NOTES
95. (1) (b) (Cont'd)	violation, viz., routine cases, such as illegal parking, short of careless driving, and cases involving the operation of vehicles other than motor vehicles. The traffic offences shall continue to be heard by the juvenile court. The purpose of this sub-section is to keep within workable limits the case load of the juvenile court in districts where the juvenile court is not organized to the point of having a traffic hearing officer, which would be the case of juvenile courts serving sparsely populated areas.

TEXT	EXPLANATORY NOTES
95. (2) Where a child or young person is tried by an ordinary court pursuant to this section, such ordinary court shall act in accordance with the provisions of section 93 of this Act.	
95. (3) Where a judge of a juvenile court is also a magistrate, nothing in this section shall be deemed to prevent such judge from acting as an ordinary court for the purposes of this section.	In sparsely populated areas, a magistrate may also be invested with the duty of enforcing the Juvenile Delinquents Act. This sub-section provides that the juvenile court judge can deal with juvenile traffic violations in his capacity as a magistrate, and thus dispense with the formalities required by this Act.

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JURISDICTION - ADULTS

TEXT	EXPLANATORY NOTES
96. (1) Notwithstanding anything in the Criminal Code or any other Act of the Parliament of Canada, where an adult is charged in an information with an offence under section 157, ~~157A~~, 186 or 231, of the Criminal Code, (a) in respect of a child or young person of whom he is the parent or guardian; (b) in respect of a child or young person with whom, being akin, he lives in the same household; or (c) in respect of a member of his family or household, and a child or young person of such family or household is affected, that adult may be brought before the juvenile court to be dealt with as hereinafter provided.	The present Juvenile Delinquents Act gives the juvenile court jurisdiction over the following adult offences: (a) for trial: (i) contributing to delinquency (33) (ii) inducing child to leave detention home (34) (iii) offences under the Criminal Code triable summarily, where committed in respect of children (35(1)). (b) for preliminary hearing: (iv) indictable offences under the Criminal Code where committed in respect of children (35(1)). In paragraphs 361 to 374 inclusive, the Report deals with the problem of the juvenile court jurisdiction over adults. Recommendation 89 gives a comprehensive resumé of the views of the Committee on this problem: Recommendation 89 "Federal legislation relating to juvenile and family court jurisdiction over offences committed by adults should be altered so as to
96. (2) Where an adult appears before the juvenile court pursuant to sub-section (1), the juvenile court shall hold a summary trial upon the information in accordance with the provisions of Part XXIV of the Criminal Code,	

....

JURISDICTION - ADULTS

TEXT

96. (3) Where an adult is found guilty of the offence with which he is charged, the juvenile court may, having regard to the circumstances of the case, the good of the child or young person involved, and the interests of justice

(a) suspend the passing of sentence and direct that the accused be released upon entering a recognizance in Form 28 of the Criminal Code, with or without sureties,

(i) to keep the peace and be of good behaviour during any period that he is freed by the court; and

(ii) to appear and receive sentence when called upon to do so during the period fixed under sub-paragraph (i), upon breach of his recognizance; or

(b) impose on the accused the sentence provided by the Criminal Code in respect of an offence punishable on summary conviction.

EXPLANATORY NOTES

permit certain less serious offences committed by adults, and involving family relationships, to be dealt with in the Juvenile or Family Court. The basis for legislative change should be as follows:

(1) The Juvenile or Family Court should have jurisdiction over certain designated offences committed in circumstances where

(a) a child is the victim of an offence and there is a continuing relationship between the child and the adult charged; or

(b) the offence has been committed by one member of a family or household against another and a child is substantially affected by the proceedings.

(2) The Juvenile or Family Court should, so far as practicable, have exclusive original jurisdiction in the situations designated.

....

JURISDICTION - ADULTS

TEXT

96. (Cont'd)

EXPLANATORY NOTES

(3) The accused should be entitled to an election as to whether he wishes to be tried by the Juvenile or Family Court or to have the matter transferred to the ordinary criminal courts. The Juvenile or Family Court should also have the power to transfer any case to the ordinary criminal courts.

(4) The Criminal Code should be reviewed to determine what offences might, in the circumstances suggested, appropriately be dealt with in the Juvenile or Family Court.

(5) The Juvenile or Family Court should have the power to dispose of appropriate cases by entering an order for the absolute or conditional discharge of an offender (Paragraph 373)"

The proposed legislation would implement, with some exceptions, the recommendations of the Committee.

"""

JURISDICTION - ADULTS

TEXT	EXPLANATORY NOTES
96. (Cont'd)	The draft adopts the principle of a jurisdiction over adults restricted to cases where a family or legal relationship exists between the adult charged and the child or young person who is the victim of, or who is affected by, the offence. It also implements the recommendation concerning the abolition of the contributing offence. On this point, the Report is not clear on whether the juvenile court should retain jurisdiction over the adults charged with offences under the Code which amount to the abolished contributing offence. However, the logic of the Report leads to the conclusion that the continuing relationship principle should be the basis for the juvenile court's jurisdiction over adults. The recommendation concerning jurisdiction of the juvenile court over adult offences involving a family relationship has been considerably restricted in its scope in the proposed legislation. The draft retains three offences only, while the recommendation contemplates seven.

/...

JURISDICTION - ADULTS

TEXT

96. (Cont'd)

EXPLANATORY NOTES

Those provided by the draft are:

(1) corrupting children (section 157 which, according to the Committee, should be re-drafted to conform with the rule of law requiring certainty of draftsmanship in penal statutes. Recommendation 88)

(2) non-support (section 186)

(3) common assault (section 231)

In addition to the above, the Committee contemplated the following:

(4) parent or guardian procuring defilement of a female child (section 155)

(5) householder permitting defilement (section 156)

(6) abduction of female under 16 (section 235)

(7) abduction of child 14 (section 236)

(8) (section 717)

In the view of the Committee, the juvenile court should have jurisdiction over "certain less serious offences" and the above offences would fulfill the criterion. It

....

JURISDICTION - ADULTS

TEXT	EXPLANATORY NOTES
96. (Cont'd)	seems inappropriate to call 4, 5, 6 and 7 "less serious offences". Parliament has expressed its views on the gravity of these offences by providing that they be prosecuted by indictment and punished by 14 or 5 years in case of (4), five years in case of (5), and (6), and 10 years in case of (7). On the other hand, it is felt that offences 1, 2 and 3 may be "less serious offences", depending on the circumstances. Section 157 in its present form does not provide for an alternative mode of prosecution, but it is submitted that it should, in view of the recommendation of the Committee concerning a lesser penalty, and also in view of the fact that the type of behaviour prohibited by that section may be, depending upon the circumstances, more or less offensive or wicked. Section 717 of the Code is not brought under the draft because Parliament has already adopted a scheme whereby the behaviour envisaged by the section may be adequately dealt with by the summary conviction court.

....

JURISDICTION - ADULTS

TEXT	EXPLANATORY NOTES
96. (Cont'd)	The philosophy underlying the recommendations of the Committee appears to be that the less serious offences committed by adults and involving family relationship should be dealt with in a non-punitive manner. It is best enunciated in the following passage quoted by the Committee from the Canadian Corrections Association's submission: "The aim is to make it possible in those instances where it seems possible to rebuild the family to have the case heard in the more hopeful atmosphere of the children's court..... Those provinces that have family courts will no doubt provide that some of these charges be laid there". (Paragraph 367). The proposed legislation does not implement the recommendation of the Committee that an adult defendant have the right to elect trial in the adult court, because this would defeat the purpose of the provision, which is to protect the interests of the child; and it is to be noted, that, under section 467 of the Criminal Code, a magistrate has

.....

JURISDICTION - ADULTS

TEXT	EXPLANATORY NOTES
96. (Cont'd)	absolute jurisdiction to try a considerable number of indictable cases in respect of which the defendant cannot, therefore, claim trial by jury or in the higher court. In view of the above reasons, the draft provides for the absolute jurisdiction of the juvenile court over offences described in section 1. The adult charged with any one of the listed offences may be brought before the juvenile court. Once before the court, the accused is to be tried summarily; in other words, the offence with which the accused is charged becomes ipso facto a summary conviction offence and must be dealt with in accordance with the provisions of Part XXIV of the Criminal Code. But, depending on the circumstances of the case as disclosed by the evidence adduced by the prosecution, and if the offence is indictable, the juvenile court may decide to continue the proceedings as a preliminary hearing, in which case the accused shall thereafter be indicted before the ordinary court, (See section 98 following).

JURISDICTION - ADULTS

TEXT	EXPLANATORY NOTES
96. (Cont'd)	The juvenile court may, in cases concerning adults, as any other court, either convict the accused or dismiss the information. This does not carry out the recommendation according to which "the juvenile court should have the power to dispose of appropriate cases by entering an order for the absolute or conditional discharge of an offender".
	There have been adapted, instead, provisions already familiar to the criminal law, concerning the suspension of sentence. It is submitted that the question concerning the disposition of cases without actual conviction should, as far as adults are concerned, be dealt with under a revision of the general system of sentencing.

JURISDICTION - ADULTS

TEXT

EXPLANATORY NOTES

97. (1) Where a juvenile court judge suspends the passing of sentence pursuant to paragraph (a) of sub-section (3) of section 96, he may prescribe as conditions of the recognizance, as it seems appropriate, that

(a) the accused shall stay away from the home, the other spouse or the child or young person;

(b) the accused shall abstain from conduct that tends to make the home not a proper place for the child or young person;

(c) the accused shall make necessary provision for the home;

(d) the accused shall report from time to time as he may prescribe to a probation officer or any other person designated by the court, and the accused shall be under the supervision of that person.

97. (2) The provisions of section 639 of the Criminal Code apply mutatis mutandis to a suspension of sentence pursuant to paragraph (a) of sub-section (3) of section 96, and to sub-section (1) of this section.

....

JURISDICTION - ADULTS

TEXT	EXPLANATORY NOTES
98. Where, in any trial pursuant to sub-section (2) of section 96, the offence charged is indictable and it appears to the juvenile court judge that for any reason the charge should be prosecuted by indictment, he may, at any time before the accused has entered upon his defence, decide not to adjudicate and shall thereupon inform the accused of his decision and continue the proceedings as a preliminary inquiry.	469(1) of the Criminal Code.

JURISDICTION - ADULTS

TEXT	EXPLANATORY NOTES
99. (1) The provisions of the Criminal Code prescribing a time limit for the commencement of prosecution for offences against the Criminal Code apply to all proceedings under the sections of this Act relating to adults.	
99. (2) The provisions of Part XXIV of the Criminal Code relating to [illegible]ls apply to any proceeding such sections.	

APPENDIX "A"

SUBSTANTIVE OFFENCES

TEXT	EXPLANATORY NOTES
Offence of inducing or attempting to induce any child to leave an institution, etc.	Section 34 of the present Juvenile Delinquents Act. The Committee made no recommendation concerning this provision. It has not been re-produced in this draft of a revised Act. Subject to the opinion of informed critics of this draft, it should either be retained, dropped, or made an offence under the Criminal Code.

APPENDIX "A"

SUBSTANTIVE OFFENCES

TEXT	EXPLANATORY NOTES
Tentative draft of a revision to Section 157 of the Criminal Code	
157. (1) Every one who, in the home of a child, participates in adultery or, in the presence of a child, indulges in indecency, either by words, gestures, or conduct, or in habitual drunkenness, and thereby endangers the morals of such child is guilty of (a) an indictable offence and is liable to imprisonment for two years; or (b) an offence punishable on summary conviction.	The offence is left unchanged to the extent that every one who participates in adultery, in the home of a child, thereby endangering the morals of the child, commits an offence. The words "renders the home an unfit place for the child to be in" have been deleted, since it is submitted that they add nothing. The words "sexual immorality" have been replaced by "indecency, either by words, gestures, or conduct". "Habitual drunkenness" has been left in. The words "any other form of vice" have been deleted, since it is submitted that they are too vague. (Recommendation 88 is to the effect that section 157 should be amended with a view to limiting both its scope and the penalty that can be imposed). All the reported prosecutions taken under present 157 involve adultery or conduct that could be branded as indecency. The provision for an alternative mode of trial implements the recommendation concerning the limitation of the penalty.

APPENDIX "A"

SUBSTANTIVE OFFENCES

TEXT	EXPLANATORY NOTES
157. (2) No proceedings for an offence under this section shall be commenced more than one year after the time when the offence was committed.	This subsection has not been changed.
157. (3) For the purposes of this section, "child" means a person who is, or appears to be, under the age of seventeen years.	The age has been changed from 18 to 17 to conform with the proposed maximum age in the revision of the Juvenile Delinquents Act. It was changed from 16 to 18 in the 1955 revision of the Criminal Code.
157. (4) No proceedings shall be commenced under subsection (1) without the consent of the Attorney General.	The words "unless they are instituted by or at the instance of a recognized society for the protection of children or by an officer of a juvenile court", have been omitted. This was done for the purpose of screening even more strictly prosecutions under this section.

.....

APPENDIX "A"

SUBSTANTIVE OFFENCES

TEXT	EXPLANATORY NOTES
DRAFT OF NEW OFFENCE:	
157A. (1) Every one who, being eighteen years of age or more, counsels, aids, or abets a child or young person to commit an offence is guilty of (a) an indictable offence and is liable to imprisonment for two years; or (b) an offence punishable on summary conviction.	This section, in the Criminal Code, would replace present section 33(1) of the Juvenile Delinquents Act, wherein the penalty is a maximum fine of $500, or imprisonment for a period not exceeding two years, or both. In section 33, the contributing offence is a summary conviction offence over which a juvenile court or a magistrate have concurrent jurisdiction. Under the proposed section, the ordinary criminal courts have jurisdiction over the offence, except where the offence has been committed by a related adult, in which case the accused would be brought before the juvenile court. In such cases, the juvenile court might proceed to try the accused for the offence punishable on summary conviction, or order that he be prosecuted by indictment before the ordinary courts. The result of abolishing section 33 of the Juvenile Delinquents Act would mean that fewer cases concerning adults would be prosecuted in juvenile court.

....

APPENDIX "A"

SUBSTANTIVE OFFENCES

TEXT	EXPLANATORY NOTES
157A. (1) (Cont'd)	The criterion would be the continuing relationship of the adult charged with the child. The purpose of establishing this criterion would be that the disposition made in an adult case should be, to the extent possible, for the good of the child, and not in conflict with what the juvenile court may be trying to accomplish with the child. Most of the reported cases under section 33 concern sexual intercourse with a "child". Such cases would no longer be brought in juvenile court.

....

APPENDIX "A"

SUBSTANTIVE OFFENCES

TEXT	EXPLANATORY NOTES
157A. (1) (Cont'd)	An adult would only be prosecuted in juvenile court when he is in a "continuing relationship" with a child, which really means of the same household, and commits an offence contrary to sections 157 (corrupting a child), 186 (providing necessaries), 231 (assault), or 157A (aiding and abetting a child to commit an offence). Although the section draws particular attention to counselling, aiding, or abetting a juvenile, it may be redundant, in view of section 21 of the Criminal Code.
157A. (2) For the purposes of this section, "offence" means an offence as defined by the Children and Young Persons Act and includes a violation as defined by that Act.	

...9

APPENDIX "B"

AFTER CARE

TEXT

EXPLANATORY NOTES

In recommendation 26 (and paragraph 186), the Committee recommended that, following release from an institution, every young person should "be subject to the jurisdiction of the juvenile court for a period of up to two years, during which time he may be required by the court to observe certain conditions and to report to a probation officer or other designated person".

Recommendation 82 and paragraphs 335 and 336 of the Report are also concerned with after care, and suggest that responsibility for after care be assigned to the probation officer, and that after care should be "subject to the direction and control of the juvenile court". It is also recommended that after care be compulsory.

In other words, the Committee recommended that there be federal legislation concerning "after care".

In the brief submitted by some of the Ontario juvenile court judges to the conference at Couchiching, the remark concerning recommendation 26 was "Not Approved".

With regard to recommendation 82, the brief stated as follows:

.....

APPENDIX "B"

TEXT	AFTER CARE	EXPLANATORY NOTES
		"After care is an urgent necessity, both for the young offender and the parents. Such care should be the responsibility of the Department of Reform Institutions".
		At present, there are no provisions in this discussion draft concerning the role to be played by the juvenile court in the field of "after care". Further consideration should be given to the advisability of such legislation, and, if its inclusion in the federal Act is deemed advisable, to the specific points to be covered in the legislation.

....

APPENDIX "C"

JUVENILE COURT COMMITTEES

TEXT

EXPLANATORY NOTES

Section 27 of the present Act provides for the establishment of juvenile court committees. Their duties are set out in Section 28.

Recommendation 45 of the Report calls for the removal of such provisions from the federal legislation, except as they relate to matters of procedure.

Recommendation 44 calls for the clarification of the function of the "juvenile court committee". The Committee pointed out the two functions of such committees:

liaison with the community and that of watchdog. In paragraph 232 of the Report, the Committee stated:

"The 'public watchdog' or 'sentinel' role seems to us to be the proper function for the juvenile court committee to perform".

In paragraph 235, the Committee referred to matters properly the subject matter of federal legislation, i.e., matters of procedure, "such as the right of members of the committee to be present at Juvenile Court Hearings."

....

APPENDIX "C"

JUVENILE COURT COMMITTEES

TEXT

EXPLANATORY NOTES

At the Couchiching Conference on Justice and the Juvenile, held in April of 1967, Group "B" (which studied "The Court") discussed recommendation 44. The general consensus of opinion was to approve of the public relations function of the Committee, but to disapprove of the watchdog function.

If the proposed provisions concerning the admission into the court room of limited numbers of the press become legislation, there is no longer any need for the "sentinel" role.

The California "juvenile justice commission" is provided for in sections 525 and 526 of the California Juvenile Court Law. Its duties are set out in section 529: these duties are very similar to those performed by the grand jury in Ontario; they include the inspection of and reporting concerning publicly administered institutions, which include jails or lock-ups where minors may be confined. Its duties generally are to "inquire into the administration of the juvenile court law in the county or region in which the commission serves."

....

APPENDIX "C"

JUVENILE COURT COMMITTEES

TEXT

EXPLANATORY NOTES

At pages 19 and 20 of "An Interim Report and Recommendations on Co-ordination of Government and Community Resources in the TREATMENT OF JUVENILE DELINQUENCY for Rural British Columbia", by C.W. Gorby (1963), reference is made to the use of juvenile court committees. The account of the use of such committees cited here would suggest that on certain occasions a juvenile court judge might find it of assistance to be able to have the power to form and call upon such a committee.

This draft includes no provision concerning juvenile court committees. The specific mention by the Committee that the rights of members of the juvenile court committee to be present at juvenile court hearings would be a proper subject for federal legislation is covered by the draft section under "hearings", which provides that such persons "shall be admitted who, in the opinion of the judge, have a direct interest in the case or in the work of the court". Actually, as presently drafted, this "right" to be present is subject to the discretion of the judge.

....

APPENDIX "C"

JUVENILE COURT COMMITTEES

TEXT	EXPLANATORY NOTES
	If the consensus of opinion of those discussing this draft is to the effect that there should be federal legislation on the subject of juvenile court committees, the point will have to be considered again.

APPENDIX "D"

DELETION OF THE DESIGNATIONS "VIOLATOR", "CHILD OFFENDER" AND "YOUNG OFFENDER"

TEXT

EXPLANATORY NOTES

This discussion draft has followed the recommendations contained in the Report to the effect that the designation "juvenile delinquent" be replaced, by the designations "violator", "child offender" and "young offender", as the case may be. (There would no longer be an offence of delinquency, and a child or young person who has committed a violation or an offence, as defined in the Act, would be designated accordingly a "violator", a "child offender", or a "young offender"). There appears to be no binding reason why these designations have to be retained, as they add little to the structure of the Act. A person convicted of theft under the Criminal Code is not designated a "thief" by the Code, nor is a person convicted of rape designated a "rapist", nor is there any general designation in the Code such as "offender" or "criminal". It is submitted that consideration might be given to dropping the designations "violator", "child offender", and "young offender". Instead, where necessary in the Act, distinctions could be made by such terms as a

....

APPENDIX "D"

DELETION OF THE DESIGNATIONS "VIOLATOR", "CHILD OFFENDER AND "YOUNG OFFENDER"

TEXT	EXPLANATORY NOTES
	"a child who has been found to have committed a violation", or "a young person who has been found to have committed an offence", etc. On the whole, it would appear that the dropping of labels or designations altogether is a further step in the direction of removing stigmatic terms.

FORM 1

(section 9)

Order of transfer to Juvenile Court

CANADA
Province of
(territorial division)

Whereas A.B., of
hereinafter called the defendant, has been brought before me on the charge that (state the offence as in the information):

And whereas the defendant is apparently or actually over the age of sixteen and under the age of eighteen years;

And whereas it appears to the Court that the good of the said defendant and the interest of the community demand it;

Therefore, I, Justice (or magistrate) of the Summary Conviction Court, order that the said A.B.
be taken before the Juvenile Court, pursuant to section 9 of the Children and Young Persons Act

GIVEN under my hand this day of 19 ,
at .

Justice (or magistrate)
in and for

FORM 2

(section 20)

Information

CANADA
Province of
(territorial division)

This is the information of C.D., of (occupation), hereinafter called the informant.

The informant says that (if the informant has not personal knowledge, state that he has reasonable and probable grounds to believe and does believe, and state the offence or violation) thereby committing an offence (or a violation) under the Children and Young Persons Act.

The informant further says that the said A.B. is or is believed to be (or resides or is believed to reside) within the territorial jurisdiction above mentioned.

Sworn before me
this day of
A.D.

at

Signature of informant

A Judge of the Juvenile
Court in and for

FORM 3

(section 21)

Summons

CANADA
Province of
(territorial division)

TO A.B. of (occupation):

WHEREAS an information has this day been received by me to the effect that you, a child (or young person) under the Children and Young Persons Act, (state the offence as in the information)

This is therefore to command you, in Her Majesty's name, to appear before me on the day of , A.D. 19 , at o'clock in the noon, at the Juvenile Court (state address of the court), to answer to the said information and to be dealt with according to law.

AND FURTHER take notice hereby that you have the right to be represented and assisted by counsel of your choice among the members of the Bar of this Province.

Dated this day of A.D.
, at

A Judge of the Juvenile Court
in and for

FORM 4

(section 22)

Warrant of arrest

CANADA
Province of
(Territorial division)

To the peace officers in the said (territorial division):

Whereas an information has this day been received by me to the effect that A.B., a child (or young person) under the Children and Young Persons Act

(state the offence as in the information) thereby committing an offence (or a violation, as the case may be) under the Children and Young Persons Act.

This is, therefore, to command you in Her Majesty's name forthwith to arrest the said A.B. and to bring him before me (or another judge for the same territorial jurisdiction) to answer to the said information and to be dealt with according to law.

Dated this day of
A.D. , at

A Judge of the Juvenile Court
in and for

FORM 5

(section 23)

Warrant where summons is disobeyed or cannot be served

CANADA
Province of
(Territorial division)

To the peace officers in the said (territorial division):

Whereas on the day of A.D., , an information was received by , a Judge of the Juvenile Court to the effect that, in the of , county (or district) of , on the day of , A.D., , A.B. a child (or young person) under the Children and Young Persons Act (state the offence) thereby committing an offence (or a violation, as the case may be) against the Children and Young Persons Act;

And whereas a summons to the said A.B. was issued commanding him, in Her Majesty's name, to appear on the day of A.D. , at o'clock in the noon, at , before me to answer to the said charge and to be dealt with according to law;

And whereas it appears (* or **);

This is therefore to command you, in Her Majesty's name, forthwith to arrest the said A.B. and to bring him before me, to answer to the said information and to be dealt with according to law.

Dated this day of A.D. 19 ,
at

A Juvenile Court Judge
in and for

* that the said A.B. has failed to appear at the time and place appointed by the said summons and it has been proved that the summons was duly served upon him.

** that the said summons cannot be served upon the said A.B.

FORM 6

(section 25)

Endorsement of Warrant

CANADA
Province of
(territorial division)

Pursuant to application this day made before me, I hereby authorize the execution of this warrant within the said (territorial jurisdiction).

Dated this day of A.D., 19 ,
at

A Judge of the Juvenile Court
in and for

FORM 7

(section 26)

Notice to Parents

CANADA
Province of
(territorial division)

To C.D. (add as many names as the case may require) of :

Whereas it has been stated before me that you are the parent (or guardian, as the case may be) (if parent, state the relationship) of A.B., a child (or young person) under the Children and Young Persons Act;

This is therefor to notify you that *

And further that the said A.B. has the right to be represented before the Court by counsel.

I do hereby command you to appear before me on the day of A.D. 19 , at o'clock in the noon, at , to attend the proceedings to be held there and then concerning the said A.B.

And you are hereby notified that your failure to comply with this notice may constitute contempt of court.

Dated this day of A.D. ,
at

A Judge of the Juvenile Court
in and for

* Insert whichever of the following is applicable
(a) an information has been received against the said A.B. to the effect that (state the offence) thereby committing an offence or violation under the Children and Young Persons Act;

(b) the said A.B. is being detained by order of the undersigned judge pending trial under an information to the effect that (state the offence)

FORM 8

(section 27)

Notice to Friend or Relative

CANADA
Province of
(territorial division)

TO C.D. of :

Whereas it has been stated before me that you are the friend (or relative) (if relative, state the relationship) of A.B., a child (or young person) under the Children and Young Persons Act;

This is therefore to notify you that *

And further that the said A.B. has the right to be represented before the Court by counsel.

I do hereby inform you that you may appear before me on the day of A.D. 19 , at o'clock in the noon, at , to attend the proceedings to be held there and then concerning the said A.B.

Dated this day of A.D. 19 ,
at

A Judge of the Juvenile Court
in and for

* Insert whichever of the following is applicable
(a) an information has been received against the said A.B. to the effect that (state the offence) thereby committing an offence or violation against the Children and Young Persons Act;

(b) the said A.B. is being detained by order of the undersigned judge pending trial under an information to the effect that (state the offence)

FORM 9

(section 28)

Order for informal adjustment

CANADA
Province of
(territorial division)

To G.H., a probation officer for the Juvenile Court of the county (or district) of

Whereas K.L., hereinafter called the informant, has appeared before me in order to lay an information under the Children and Young Persons Act against A.B., a child (or young person) under the said Act;

And whereas there is evidence or belief upon which the said information could be received;

And whereas, in the interests of justice and for the good of A.B., it appears expedient to enquire into the advisability of adjusting the case;

This is therefore to command you to confer with the informant, the said A.B. and his parent, parents or guardian, or other interested persons, with a view to adjusting the case without the laying of an information;

And further to report to me within two months as of this date.

Dated this day of A.D. 19 ,
at

A Judge of the Juvenile Court
in and for

FORM 10

(section 40)

Deposition of a Witness

CANADA
Province of
(territorial division)

These are the depositions of X.Y., of , and M.N., of , taken before me this day of A.D. 19 , at , in the presence and hearing of A.B., hereinafter called the defendant, concerning whom an information has been received that he (state the offence).

X.Y., having been duly sworn, deposes as follows: (insert deposition as nearly as possible in words of witness).

M.N., having been duly sworn, deposes as follows:

I certify that the depositions of X.Y., and M.N., written on the several sheets of paper hereto annexed to which my signature is affixed, were taken in the presence and hearing of the defendant (and signed by them respectively, in his presence.

In witness whereof I have hereto signed my name.

A Judge of the Juvenile Court
in and for

FORM 11

(section 41)

Warrant of committal of witness for refusing to be sworn or to give evidence

CANADA
Province of
(territorial division)

To the peace officers in the (territorial division):

Whereas A.B. of , hereinafter called the defendant, has been charged that (set out offence as in the information):

And Whereas E.F. of , hereinafter called the witness, attending before me to give evidence for (the prosecution or the defence) concerning the charge against the accused (refused to be sworn, or, being duly sworn as a witness, refused to answer certain questions concerning the charge that were put to him, or refused or neglected to produce the following writings, namely, or refused to sign his deposition) having been ordered to do so, without offering any just excuse for such refusal or neglect;

This is therefore to command you, in Her Majesty's name, to take the witness and convey him safely to the prison at , and there deliver him to the keeper thereof, together with the following precept:

I do hereby command you, the said keeper, to receive the said witness into your custody in the said prison and safely keep him there for the term of days, unless he sooner consents to do what was required of him, and for so doing this is a sufficient warrant.

Dated this day of A.D., 19 ,
at

A Judge of the Juvenile Court
in and for

FORM 12

(section 42)

Conviction for contempt

CANADA
Province of
(territorial division)

Be it remembered that on the day of A.D. , at in the (territorial division), E.F. of , hereinafter called the defaulter, is convicted by me for contempt in that he did not attend before (set out court) to give evidence on the hearing of a charge that (state fully offence with which defendant was charged), although (duly subpoenaed or bound by recognizance to attend to give evidence, as the case may be) and has not shown before me any sufficient excuse for his default;

Wherefore I adjudge the defaulter for his said default, (set out punishment as authorized and determined in accordance with section 42).

Dated this day of A.D.
at

A Judge of the Juvenile Court
in and for

FORM 13

(section 42)

Warrant of committal for contempt

CANADA
Province of
(territorial division)

To the peace officers in the said (territorial division) and to the keeper of the (prison) at

Whereas E.F. of , hereinafter called the defaulter, was on the day of A.D. , at , convicted before for contempt in that he did not attend before to give evidence on the hearing of a charge that (state offence as in the information) against A.B. of , although (duly subpoenaed or bound by recognizance to appear and give evidence in that behalf, as the case may be) and did not show any sufficient excuse for his default;

And Whereas in and by the said conviction it was adjudged that the defaulter (set out punishment adjudged);

And Whereas the defaulter has not paid the amounts adjudged to be paid; (delete if not applicable)

This is therefore to command you, in Her Majesty's name, to take the defaulter and convey him safely to the prison at and there deliver him to the keeper thereof, together with the following precept:

I do hereby command you, the said keeper, to receive the defaulter into your custody in the said prison and imprison him there * and for so doing this is a sufficient warrant.

Dated this day of A.D.
at

A Judge of the Juvenile Court
in and for

* Insert whichever of the following is applicable:
(a) for the term of
(b) for the term of unless the said sums and the costs and charges of the committal and of conveying the defaulter to the said prison are sooner paid, or
(c) for the term of and for the term of (if consecutive so state) unless the said sums and costs and charges of the committal and of conveying the defaulter to the said prison are sooner paid.

FORM 14

(section 52)

Order of Transfer from Juvenile Court to Ordinary Court

CANADA
Province of
(territorial division)

Be it remembered that on the day of A.D. 19 , A.B., being a young person under the Children and Young Persons Act, was before me upon an information, to wit: (state the offence as in the information) thereby committing an offence under the Children and Young Persons Act;

And whereas, before a plea was taken by me, *

Therefore, I, Judge of the Juvenile Court, order that the said A.B. be proceeded against in the ordinary court in accordance with the provisions of the Criminal Code;

And further, I request the said ordinary court to remand the said A.B. before the Juvenile Court for disposition, if a conviction is entered against the said A.B. by the said ordinary court.

Dated this day of A.D. 19 ,
at

A Judge of the Juvenile Court
in and for

* Insert whichever of the following is applicable:

(a) the said A.B. requested to be tried by the ordinary court;

(b) the Attorney General requested that the said A.B. be tried by the ordinary court;

FORM 15

(section 53(1)(a))

Transfer from Juvenile Court to ordinary Court for both trial and sentence

CANADA
Province of
(territorial division)

Whereas A.B., being a young person under the Children and Young Persons Act, was before me upon an information, to wit: (state the offence as in the information), thereby committing an offence under the Children and Young Persons Act;

And Whereas, at an adjudicatory hearing upon the said information, notice of which was given to the parent (or guardian) of the said A.B., prima facie evidence was adduced that the said A.B. has committed an offence against the Children and Young Persons Act;

And Whereas a full investigation has been conducted under my supervision into the background of the said A.B. and the circumstances of the offence;

I find that the said A.B. is not subject to committal to an institution for the mentally deficient or the mentally ill;

I further find that *

And Whereas the good of the said A.B. and the interest of the community demand it;

I therefore order that the said A.B. be proceeded against before the ordinary court in accordance with the provisions of the Criminal Code.

Dated this day of A.D. 19 ,
at

Judge of the Juvenile Court
in and for

* Insert whichever of the following is applicable:

(a) the said A.B. is not suitable for treatment in any available institution or facility designed for the care and treatment of young persons.
(b) the safety of the community requires that the young person continue under restraint for a period longer than I would, in case of an adjudication that the said A.B. is a young offender, be authorized to order.

FORM 16

(section 53(1)(b))

Transfer from Juvenile Court to ordinary Court for trial only

CANADA
Province of
(territorial division)

Whereas A.B., being a young person under the Children and Young Persons Act, was before me upon an information, to wit: (state the offence as in the information), thereby committing an offence under the Children and Young Persons Act;

And Whereas, at an adjudicatory hearing upon the said information, notice of which was given to the parent (or guardian) of the said A.B., prima facie evidence was adduced that the said A.B. has committed an offence against the Children and Young Persons Act;

And Whereas a full investigation has been conducted under my supervision into the background of the said A.B. and the circumstances of the offence;

I find that the said A.B. is not subject to committal to an institution for the mentally deficient or the mentally ill;

And Whereas the good of the said A.B. and the interest of the community demand it;

I therefore order that the said A.B. be proceeded against in the ordinary court for the purpose of his trial in accordance with the provisions of the Criminal Code.

And I further request that, if the said A.B. is found guilty of the above mentioned offence by the ordinary court, he be remanded by the said ordinary court for disposition before the Juvenile Court.

Dated this day of A.D. 19 ,
at

A Judge of the Juvenile Court
in and for

FORM 17

(section 56)

Adjudication Order

CANADA
Province of
(territorial division)

Whereas on the day of , A.D. 19 , A.B., being a child (or young person) under the Children and Young Persons Act, appeared before me to answer to an information, to wit: (state the allegations of the information);

And Whereas *

And Whereas **

After considering the matter, I therefore ***

Dated this day of , A.D. 19 ,
at

Judge of the Juvenile Court
in and for

Insert whichever of the following is applicable:

* (a) the said A.B. has admitted the facts of the information
(b) the said A.B. has denied the facts of the information

** (a) I have found the admission of the said A.B. to have been corroborated.
(b) I have heard the prosecutor, defendant and witnesses.

*** (a) adjudge the information to have been proved
(b) dismiss the information

FORM 18

(section 57(b))

Provisory Adjudication Order

CANADA
Province of
(Territorial division)

Whereas I, the undersigned Judge of the Juvenile Court, have adjudged the information to have been proved that A.B. (state the offence or violation as in the information;

And Whereas I have heard evidence on the question of the adjudication to be made, and have considered the pre-disposition report concerning the said A.B.;

I therefore adjourn the case for a period to expire on the day of , A.D. 19 ,

And further, I order that the said A.B. *

1) etc.

And I further order the said A.B. to appear before me on the day of , A.D. 19 , for final adjudication.

Dated this day of , A.D. 19 ,
at

Judge of the Juvenile Court
in and for

* include any one or more of the conditions set out in paragraph (b) of section 57.

FORM 19

(section 57)

Final Adjudication

CANADA
Province of
(territorial division)

Whereas *

I therefore **

Dated this day of , A.D. 19 ,
at

Judge of the Juvenile Court
in and for

* Insert whichever of the following is applicable.

(a) I, the undersigned Judge of the Juvenile Court, have adjudged the information to have been proved that A.B. (state the offence or violation as in the information), and
whereas I have heard evidence on the question of the adjudication to be made and considered the pre-disposition report concerning the said A.B.;

(b) I, the undersigned Judge of the Juvenile Court, after having adjudged the information to have been proved that A.B. (state the information), and after having adjourned the case and considered the behaviour of the said A.B. thereupon;

** Insert whichever of the following is applicable.

(a) find that the said A.B., having appeared before me, is not likely to engage in further offences or violations, and I therefore discharge the said A.B. absolutely.

(b) find that the evidence furnishes good grounds for believing that the said A.B. is a child (or young person) in need of care or supervision, in that (state grounds), and therefore I dismiss the information and order that the said A.B. be proceeded against under provincial legislation in that behalf.

(c) adjudge the said A.B. to be (whichever is the case)
(i) a child offender
(ii) a young offender
(iii) a violator

FORM 20

(sections 58, 59, 60 and 61)

Order of disposition

CANADA
Province of
(territorial division)

Whereas A.B., a child (or young person) under the Children and Young Persons Act, has been adjudged on the day of A.D. 19 , to be a (young offender, child offender, or violator, as the case may be);

And Whereas I have heard evidence on the question;

I therefore order the following disposition, to wit: (state the disposition as provided in sections 58, 59, 60 or 61 of the Children and Young Persons Act, as the case may be).

Dated this day of , A.D. 19 ,
at

Judge of the Juvenile Court
in and for

FORM 21

(section 62)

Probation Order

CANADA
Province of
(territorial jurisdiction)

Whereas A.B., being a child (or young person) under the Children and Young Persons Act, was before me upon an information, to wit: (state the offence as in the information), thereby committing an offence under the said Children and Young Persons Act;

And Whereas I, the undersigned Judge of the Juvenile Court, on the day of , A.D. 19 , having adjudged the information to have been proved, *

And whereas the said A.B. resides (or will shortly reside) in the of , being my territorial jurisdiction (or being the territorial jurisdiction of)

I therefore order that the said A.B. be placed under the supervision of E.F., a probation officer of the municipality of (or G.H., of the municipality of , a person designated by me as being suitable to supervise the said A.B.), hereinafter referred to as the probation officer, from the date of this order until the day of , A.D. 19 (period not exceeding two years).

I further order that the said A.B. abide by the following rules:

1. To be of good behaviour;

2. To appear before me upon request so that I may vary the terms of this order;

3. To report in person to the probation officer at least a month, upon a day and place set by the probation officer, and at such other times as may be especially required by the probation officer;

4. To (insert such further conditions as the judge considers desirable, pursuant to section 62(1)(g) of the Act; for example:

...

* Insert whichever of the following is applicable:

(a) adjudged the said A.B. to be

(whichever is the case)

(i) a violator
(ii) a child offender
(iii) a young offender

(b) adjourned the case until the day of , A.D. 19 .

FORM 21 (Cont'd)

(a) make restitution in cash to I.J. (etc), a person (or persons) injured by the offence, in the following amounts:

Name and address .....Amt. .....
to be paid within months, and payable to the clerk of this court, Box 00, ;

(b) attend school regularly and be subject to the discipline of the school, not leaving the school without the written permission of the probation officer;

(c) work steadily or search diligently for employment, not leaving any employment without good and sufficient reasons;

(d) be in his home not later than o'clock, p.m., Sunday to Thursday, and o'clock p.m., Friday and Saturday, unless he is accompanied by a parent or legal guardian, or he has the written permission of the probation officer;

(e) immediately inform the probation officer of any change, or intended change, of address, and not to move from the place of residence without express permission from the probation officer;

(f) not associate with persons designated by the Court).

And notice is hereby given that if the said A.B. fails to observe the above conditions, he may be returned to the court to be dealt with as the court may decide, pursuant to section 65 of the Children and Young Persons Act.

Dated this day of , A.D. 19 ,
at .

Judge of the Juvenile Court
in and for

The terms and conditions of this Order have been explained to me and I thoroughly understand them.

Witness

Signed A.B.

Taken and acknowledged before me
the day of ,
A.D. 19 , at the of
, in the
of .

Judge

FORM 22

(section 64)

Order of Discharge

CANADA
Province of
(territorial division)

Whereas I, the undersigned Judge of the Juvenile Court, have adjudged, on the day of , A.D. 19 , A.B., a child (or young person) under the Children and Young Persons Act, to be a (young offender, a child offender or a violator), pursuant to the said Act;

And Whereas I find that the said A.B. no longer requires the supervision of the Juvenile Court;

I therefore discharge the said A.B. from the supervision of the Court.

Dated this day of , A.D. 19 ,
at

Judge of the Juvenile Court
in and for

(Filed Separately)

CONFIDENTIEL

AVANT-PROJET AUX FINS D'ÉTUDE

LOI CONCERNANT LES ENFANTS ET LES ADOLESCENTS

Ministère du Solliciteur Général

Ottawa

Septembre, 1967

TABLE DES MATIÈRES

...

AVANT-PROJET AUX FINS D'ÉTUDE

LOI CONCERNANT LES ENFANTS ET LES ADOLESCENTS

TITRE

TEXTE	NOTES EXPLICATIVES
1. La présente loi peut-être citée sous le titre: Loi sur les enfants et les adolescents.	La recommandation 6 porte que la "Loi sur les jeunes délinquants" devrait s'appeler la "Loi sur les enfants et les jeunes personnes". De l'avis du Comité, ce changement de terminologie est de nature à atténuer la flétrissure qui s'attache à l'expression "jeunes délinquants". (Voir le paragraphe 88 du Rapport) NOTE: Le "Rapport" dont il sera fait mention à diverses reprises dans ces notes est le Rapport du Comité du ministère de la Justice sur la Délinquance juvénile (1965). Comme l'indique le titre, le "Comité" dont il s'agit est un Comité du ministère de la Justice. Les "Recommandations" mentionnées dans les présentes notes explicatives se trouvent au paragraphe 435 du Rapport (Voir le chapitre XIV, page 305 et suivantes). Les "paragraphes" renvoient au paragraphes du Rapport.
2. Dans la présente loi, l'expression	

....

INTERPRÉTATION

TEXTE	NOTES EXPLICATIVES
(1) "décision" s'entend de toute conclusion d'un tribunal pour mineurs sur la question de savoir si une dénonciation a été prouvée ou si un enfant ou un adolescent, selon le cas, est ou n'est pas un enfant contrevenant, un adolescent contrevenant ou un transgresseur et comprend une ordonnance rendue en conformité de l'article .56.;	
(2) "audition aux fins d'une décision" désigne une audition en vue d'établir si les allégations contenues dans une dénonciation sont fondées sur une preuve (prépondérante) et s'il y a lieu de décider qu'un enfant ou un adolescent, selon le cas, est un enfant contrevenant, un adolescent contrevenant ou un transgresseur;	
(3) "adulte" désigne une personne de 17 ans ou plus;	
(4) "enfant" désigne un garçon ou une fille de dix (ou douze) ans ou plus et de moins de quatorze ans;	Selon le Rapport, l'âge minimum devrait être fixé à 10 ans, ou, au maximum à 12 ans, sans exclure la possibilité d'un âge minimum qui serait variable. On a recommandé que la question de l'âge minimum fasse l'objet de discussions entre le gouvernement fédéral et les autorités provinciales....

INTERPRÉTATION

TEXTE	NOTES EXPLICATIVES
(4) (Suite)	(Voir la recommandation 7 ainsi que les paragraphes 111, 114, et 116). Le présent article, tel qu'il est rédigé, n'est pas flexible, parce que la Recommandation portant l'établissement d'un âge minimum de la responsabilité pénale et celle qui milite en faveur d'un âge minimum variable sont contradictoires. Cette recommandation vise l'âge minimum de la responsabilité pénale; elle comporte donc que l'article 12 du Code criminel devrait être modifié. S'il n'est pas modifié de façon à le rendre conforme à l'âge minimum ci-dessus indiqué, il aurait pour effet que les enfants entre les âges de 7 ans et le nouvel âge minimum (10 ou 12) seraient soumis à toutes les rigueurs des tribunaux pour adultes. Telle ne peut pas être l'intention du Comité et, par conséquent, l'article 12 du Code criminel devrait être modifié de façon que l'âge minimum de la responsabilité pénale soit le même que l'âge minimum adopté par le présent article. Dans le même ordre d'idée, la Recommandation 8 du Rapport porte que l'article 13 du Code criminel devrait être abrogé. ....

INTERPRÉTATION

TEXTE	NOTES EXPLICATIVES
(4) (Suite)	L'article en question décrète ce qui suit: "Nul ne doit être déclaré coupable d'une infraction à l'égard d'un acte ou d'une omission de sa part lorsqu'il était âgé de 7 ans ou plus, mais de moins de 14 ans, à moins qu'il ne fût en état de comprendre la nature et les conséquences de sa conduite et de juger qu'il agissait mal." En portant l'âge de la responsabilité pénale au même palier à la fois dans le Code criminel et dans la Loi revisée, et en rendant la nouvelle loi applicable dans tout le Canada on rendrait tous les jeunes contre qui sont intentées des procédures à la suite d'infractions justiciables des tribunaux pour mineurs. L'utilité de conserver dans le Code criminel cet article 13 soulève quelque doute; le Comité a recommandé son abrogation.
(5) "enfant contrevenant" désigne un enfant qui commet une contravention;	Voir ci-dessous les commentaires au sujet de l'expression "adolescent contrevenant". L'enfant contrevenant sera soumis à un traitement légèrement différent de celui qui s'appliquera à l'adolescent contrevenant;

....

INTERPRÉTATION

TEXTE	NOTES EXPLICATIVES
(5) (Suite)	ainsi, son cas ne pourrait pas être déféré aux tribunaux criminels ordinaires et il serait passible de peines moins sévères, particulièrement lorsqu'il s'agit d'amendes. (Voir le paragraphe 150)
(6) "Cour d'appel" désigne (a) dans la province d'Ontario, la Cour d'appel;	Dans sa recommandation 60, qui concerne le droit d'appel, le Comité déclare que "l'accusé devrait avoir le droit d'en appeler de plano à la Cour d'appel." Selon l'article 37 actuel, l'appel doit être porté à un juge de la Cour suprême, avec nouvel appel possible à la Cour d'appel. Au paragraphe 275 de leur Rapport, les membres du Comité n'ont pas défini l'expression "Cour d'appel". Le présent article adopte la définition que le Code criminel donne de la Cour d'appel et qu'on trouve au paragraphe (12) de l'article 2 et tient ainsi compte du commentaire suivant formulé par le Comité: "L'adoption de la formule que nous proposons permettrait de trancher d'importantes questions de droit devant le seul tribunal dont les jugements s'appliquent dans toute la province."

....

INTERPRÉTATION

TEXTE	NOTES EXPLICATIVES
(6) (Suite)	Selon la définition qu'en donne le Code criminel, c'est la Cour d'appel qui constitue véritablement ce tribunal.
(b) dans la province de Québec, la Cour du Banc de la Reine, division d'appel;	
(c) dans la province de Nouvelle-Ecosse, la division d'appel de la Cour Suprême;	
(d) dans la province du Nouveau-Brunswick, la Cour d'appel, autrement connue sous le nom de la division d'appel de la Cour suprême;	
(e) dans la province de Colombie-Britannique, la Cour d'appel;	
(f) dans la province de l'Ile-du-Prince-Edouard, la Cour suprême;	
(g) dans la province de Manitoba, la Cour d'appel;	
(h) dans la province de Saskatchewan, la Cour d'appel;	

....

INTERPRÉTATION

TEXTE	NOTES EXPLICATIVES
(6) (Suite)	
(i) dans la province d'Alberta, la Division d'appel de la Cour suprême;	
(j) dans la province de Terre-Neuve, la Cour suprême constituée par deux ou plusieurs juges de cette cour;	
(k) dans le territoire du Yukon, la Cour d'appel, et	
(l) dans les Territoires du Nord-Ouest, la Cour d'appel;	
(7) "défendeur" désigne tout enfant, adolescent ou adulte contre qui des procédures sont intentées sous le régime de la présente loi;	
(8) "disposition" désigne toute ordonnance concernant un enfant ou un adolescent, selon le cas, qu'une décision a déclaré être un enfant contrevenant, un adolescent contrevenant ou un transgresseur, en vertu de l'alinéa (d) de l'article 57;	

....

INTERPRÉTATION

TEXTE	NOTES EXPLICATIVES
(9) "un juge" ou "le juge" désigne un juge d'un tribunal pour mineurs;	
(10) "tribunal pour mineurs" désigne tout tribunal dûment établi en vertu d'une loi provinciale pour prendre des mesures à l'égard des enfants et des adolescents en vertu de la présente loi, ou spécialement autorisé par une loi provinciale, par le gouverneur en conseil ou par le lieutenant-gouverneur en conseil à prendre des mesures à l'égard des enfants et des adolescents en vertu de la présente loi;	Le texte de ce paragraphe 10 est une adaptation de l'article 2(b) de la Loi sur les jeunes délinquants.
(11) "municipalité" comprend la corporation d'une cité, d'une ville, d'un village, d'un comté, d'un township, d'une paroisse, ou de tout autre circonscription territoriale ou subdivision locale d'une province, dont les habitants sont constitués en corporation ou ont le droit de détenir collectivement des biens dans un but d'utilité publique;	Texte tiré de l'article 2(31) du Code criminel

....

INTERPRETATION

TEXTE	NOTES EXPLICATIVES
(12) "contravention" désigne toute infraction au Code criminel ou à toute Loi ou toute disposition d'une Loi du Parlement du Canada ou de la Législature d'une province figurant dans l'annexe, cette Annexe pouvant être modifiée à l'occasion par proclamation du gouverneur en conseil (a) par l'adjonction d'une loi ou d'une disposition de loi du Parlement du Canada ou de la Législature d'une province, ou (b) par le retranchement d'une loi ou d'une disposition de loi du Parlement du Canada ou de la Législature d'une province;	Le Rapport a recommandé l'abolition de l'infraction générique désignée sous le nom de délit, telle qu'on la trouve définie à l'article 3(1) de la loi actuelle. (Voir la Recommandation 11 ainsi que le paragraphe 146). Le Rapport a recommandé qu'une distinction soit établie entre les infractions d'un caractère grave et les infractions d'un caractère moins grave. Une infraction qui constitue une violation du Code criminel ou de "dispositions d'autres lois fédérales ou provinciales que désigne à l'occasion le gouverneur en conseil" serait considérée comme une infraction d'un caractère grave. (Voir la Recommandation 12 ainsi que le paragraphe 149). En rédigeant cette définition on a tenu compte de l'article 28(5) de la nouvelle loi d'interprétation. Selon l'article 28(29) de la nouvelle loi d'interprétation, le terme "province" comprend le Territoire du Yukon et les Territoires du Nord-Ouest. Selon l'article 28(18) de la nouvelle loi d'interprétation le terme "législature" comprend le

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INTERPRÉTATION

TEXTE		NOTES EXPLICATIVES
(12)	(Suite)	lieutenant-gouverneur en conseil et l'Assemblée législative des Territoires du Nord-Ouest, le Commissaire en conseil du Territoires du Nord-Ouest, le Commissaire en conseil du Territoire du Yukon et le Commissaire en conseil des Territoires du Nord-Ouest.
(13)	"agent de surveillance" désigne tout agent de surveillance dûment nommé en vertu des dispositions d'une loi provinciale ou de la présente loi;	Cette disposition est tirée de l'article 2(1)(j) de la loi actuelle sur les jeunes délinquants.
(14)	"poursuivant" désigne le procureur général, ou lorsque celui-ci n'intervient pas, la personne qui intente des procédures visées par la présente loi, et comprend un conseil agissant pour le compte de l'un ou de l'autre;	Le Comité a recommandé qu'un procureur de la Couronne soit présent lors des procédures devant un tribunal pour mineurs; aucune recommandation ne propose qu'il prenne la direction des procédures. (Recommandation 49). Cette définition, tirée du paragraphe (34) de l'article 2 du Code criminel, indique que la poursuite devrait habituellement être conduite par un avocat agissant pour le compte du procureur général; le dénonciateur ou son représentant peut agir à la place du procureur général ou de son délégué.

INTERPRÉTATION

TEXTE	NOTES EXPLICATIVES
(15) "circonscription territoriale" comprend toute province, comté, union de comtés, township, cité, ville, paroisse ou autre circonscription ou subdivision judiciaire que vise le contexte;	Cette définition reproduit le texte du paragraphe (10) de l'article 2 du Code criminel.
(16) "école de formation" désigne toute institution de réforme pour enfants ou adolescents, dûment approuvée par une loi provinciale ou par le lieutenant-gouverneur en conseil d'une province, et comprend une semblable institution dans une province autre que celle où la détention a lieu, lorsque cette institution est par ailleurs disponible;	La Recommandation 75 port ce qui suit: "On devrait remplacer l'expression "école industrielle" par celle "d'école de formation". (Voir également le paragraphe 312).
(17) "adolescent contrevenant" désigne un adolescent qui commet une contravention;	Le Rapport souhaite qu'une distinction soit établie entre les "contrevenants" de divers âges. "L'adolescent contrevenant pourrait alors subir un traitement quelque peu différent de celui qui est prévu pour "l'enfant contrevenant". Cette distinction est apparente dans les dispositions ayant trait à la façon de statuer sur des infractions de ce genre et, plus

....

INTERPRETATION

TEXTE	NOTES EXPLICATIVES
(17) (Suite)	particulièrement, dans les dispositions relatives au renvoi. (Voir le paragraphe 150.)
(18) "adolescent" désigne un garçon ou une fille de quatorze ans ou plus et de moins de dix-sept ans;	Le Rapport déclare que l'âge maximum devrait être uniforme à travers tout le Canada et être fixé à 17 ans. Les adolescents de cet âge ne tomberaient par conséquent pas de façon habituelle sous le régime de cette loi. (Voir la Recommandation 9 ainsi que les paragraphes 132 et 136 du Rapport).
(19) "transgression" désigne une infraction à une loi du Parlement du Canada ou de la Législature d'une province qui n'est pas comprise dans l'annexe, ou à un règlement municipal ou à un règlement ou une ordonnance;	Comme on l'a signalé ci-dessus, le Rapport a recommandé des distinctions entre les fautes graves et les fautes légères. Un écart de conduite autre que celui qui est décrit ci-dessus (dans la définition du terme "contravention") serait considéré comme une infraction légère. Ce terme engloberait toute autre infraction, "que ce soit aux termes d'un statut fédéral ou provincial, d'un règlement municipal ou d'un règlement ou d'une ordonnance". (Voir la recommandation 12 ainsi que le paragraphe 149).

....

INTERPRETATION

TEXTE	NOTES EXPLICATIVES
(19) (Suite)	Le rapport désigne cette catégorie par le mot "contravention". Afin d'éviter toute confusion, (il semble plus approprié de dire qu'un contrevenant est l'auteur d'une contravention) le présent paragraphe retient le mot transgression.
(20) "transgresseur" désigne un adolescent ou un enfant qui commet une transgression.	Un "transgresseur" serait celui qui a commis une faute de moindre importance, et qui ne serait pas soumis à tous les moyens de correction dont "l'enfant ou l'adolescent contrevenant" serait passible. (Voir la recommandation 12 ainsi que le paragraphe 149). Le Rapport ne fait aucune mention d'une distinction possible entre les "transgresseurs" de divers âges. Il n'y a pas lieu de distinguer entre les transgresseurs de moins de 14 ans et ceux de plus de 14 ans, a-t-on pensé. Aucune mention du reste n'est faite du terme "transgresseur". Le terme "transgresseur est utilisé avec certaines craintes, et pourrait fort bien être remplacé par un terme plus approprié. (Voir l'appendice "D")

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APPLICATION

TEXTE	NOTES EXPLICATIVES
3. (1) Commet une contravention tout enfant ou adolescent qui commet un acte contraire aux dispositions du Code criminel ou aux dispositions d'une loi mentionnée dans l'annexe.	Voir les notes explicatives en regard de l'article 2(12)
(2) Commet une transgression tout enfant ou adolescent qui commet un acte contraire à une loi du Parlement du Canada ou d'une législature d'une province qui n'est pas comprise dans l'annexe, ou contraire à un règlement municipal ou à un règlement ou une ordonnance.	Voir les notes explicatives en regard de l'article 2(19).
(3) Tout enfant ou adolescent qui commet une contravention ou une transgression doit être traité comme il est ci-après prévu.	

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PRINCIPES

TEXTE

4. Un enfant ou un adolescent qu'une décision a déclaré être un **transgresseur, ou un enfant** contrevenant ou un adolescent contrevenant, selon le cas, doit être traité non pas comme un enfant ou un adolescent qu'il faut punir mais comme un enfant ou un adolescent qui a besoin d'aide, d'orientation et d'une surveillance appropriée.

NOTES EXPLICATIVES

Cette disposition a été adaptée de l'article 3(2) de la Loi actuelle sur les jeunes délinquants, dont voici le texte: "Lorsqu'il est jugé qu'un enfant a commis un délit, il doit être traité non comme un contrevenant mais comme quelqu'un qui est dans une ambiance de délit et qui, par conséquent, a besoin d'aide et de direction et d'une bonne surveillance." Essentiellement, cet article ressemble dans une large mesure à celui qui suit et pourrait bien être superflu.

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INTERPRÉTATION

TEXTE	NOTES EXPLICATIVES
5. (1) La présente loi doit être libéralement interprétée afin que son objet puisse être atteint, savoir: que le soin, la garde et la discipline d'un enfant ou d'un adolescent déclaré être, par une décision, un transgresseur, un enfant contrevenant ou un adolescent contrevenant, ressemblent autant que possible à ceux que devraient assurer ses père et mère, et que, autant qu'il est praticable, chacun de ces enfants ou adolescents soit traité, non comme un criminel, mais comme un enfant mal dirigé et mal orienté, et qui a besoin de secours, d'encouragement, d'aide et d'assistance.	Cette disposition modifie légèrement l'article 38 de la Loi actuelle sur les jeunes délinquants, que voici: "La présente loi doit être libéralement interprétée afin que son objet puisse être atteint, savoir: que le soin, la surveillance et la discipline d'un jeune délinquant ressemblent autant que possible à ceux qui lui seraient donnés par ses père et mère et que, autant qu'il est praticable, chaque jeune délinquant soit traité, non comme un criminel, mais comme un enfant mal dirigé, ayant besoin d'aide, d'encouragement et de secours. 1929, c.46, art. 38." Le Rapport laisse entendre que cet article devrait être conservé. Au paragraphe 191, on lit ce qui suit: "Nous acceptons la pensée exprimée à l'article 38 de la loi. L'esprit fondamental de la loi n'est pas l'élément qui présente un problème; le problème réside plutôt dans le fait que la société n'a pas fourni au tribunal pour mineurs les ressources suffisantes pour réaliser l'esprit de la loi."

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INTERPRÉTATION

TEXTE	NOTES EXPLICATIVES
5. (Suite) (2) En cas d'incompatibilité avec les dispositions de toute autre loi du Parlement du Canada, les dispositions de la présente loi l'emportent.	

DÉLAI

TEXTE	NOTES EXPLICATIVES
6. (1) Aucune disposition générale prévoyant un délai pour porter plainte ou pour faire une dénonciation au sujet d'infractions punissables sur déclaration sommaire de culpabilité ne s'applique aux procédures intentées en vertu de la présente loi contre un enfant ou un adolescent.	L'article 5(1) actuel de la Loi sur les jeunes délinquants a fait l'objet d'une nouvelle rédaction. Le Comité n'a formulé aucune recommandation à cet égard. Une disposition subséquente de la présente partie de la loi applicable aux adultes traitera du délai applicable aux poursuites intentées contre les adultes.
6. (2) Les dispositions du Code criminel qui prescrivent un délai pour l'ouverture des poursuites à l'égard d'infractions punissables par voie de mise en accusation s'appliquent, <u>mutatis mutandis</u>, aux procédures qui relèvent de la présente loi.	Voir le paragraphe 2 de l'article 5 actuel de la Loi sur les jeunes délinquants. Les infractions visées sont: art. 157, corruption d'enfants art. 184, proxénétisme art. 156, maître de maison qui permet le défloremement art. 155, père, mère ou tuteur qui cause le défloremement art. 145(1)b), rapport sexuel avec son employée, art. 144, séduction sous promesse de mariage.

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JURIDICTION

TEXTE	NOTES EXPLICATIVES
DISPOSITIONS GÉNÉRALES	
7. (1) Sous réserve des articles 52 et 53, un tribunal ou un juge possède une compétence exclusive en matière de poursuites relatives à toute contravention ou transgression imputée à un enfant ou un adolescent, y compris les cas où, après que la contravention ou transgression imputée a été commise, l'adolescent a dépassé l'âge de dix-sept ans.	Cet article vise le sujet que traite l'article 4 actuel de la Loi sur les jeunes délinquants. Des dispositions semblables se retrouvent dans les Lois américaines, voir par exemple: la Standard Juvenile Court Act (Loi modèle) art. 8; Oregon 419.476.
(2) Nonobstant toute disposition de la présente loi, le tribunal pour mineurs n'a aucune compétence en ce qui concerne les personnes de vingt et un ans ou plus, et il n'a pas compétence pour rendre une ordonnance touchant une personne au-delà du vingt et unième anniversaire de naissance de cette personne.	La dernière partie de cette disposition est conforme à la recommandation 27 et au paragraphe 186 du Rapport. La recommandation 27 porte ce qui suit: "Le tribunal pour mineurs ne devrait en aucun cas avoir le pouvoir d'émettre une ordonnance liant une jeune personne après son vingt et unième anniversaire de naissance."

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JURIDICTION

TEXTE	NOTES EXPLICATIVES
LIEU OU L'AFFAIRE DOIT ÊTRE ENTENDUE	
8. Sauf dispositions contraires dans la présente loi, les procédures prévues par la présente loi doivent être introduites devant le tribunal ayant juridiction territoriale à l'endroit où l'enfant ou l'adolescent est trouvé, ou à son lieu de résidence, ou au lieu où la contravention ou transgression imputée s'est produite.	La Loi sur les jeunes délinquants ne renferme aucune disposition relative au lieu où une affaire doit être jugée. Les Lois américaines qui ont été consultées renferment des articles semblables à celui-ci: citons par exemple, la loi du Minnesota: 260.121; la loi de l'Illinois: 2-6(1). En rédigeant cet article on a tenu compte de l'article 414(a) du Code criminel.
RENVOI D'UN TRIBUNAL STATUANT SUR DÉCLARATION SOMMAIRE DE CULPABILITÉ À UN TRIBUNAL POUR MINEURS	
9. Lorsqu'une personne âgée de plus de seize ans et de moins de dix-huit ans comparaît devant un tribunal statuant sur déclaration sommaire de culpabilité en conformité de la Partie XXIV du Code criminel, ce tribunal peut, de sa propre initiative ou à la demande de la Couronne, à tout moment avant la sentence, rendre une ordonnance pour que cette personne comparaisse devant le tribunal pour mineurs, s'il	Cet article tend à donner suite à la recommandation 22. Il envisage un renvoi d'un tribunal ordinaire à un tribunal pour mineurs de cas où de jeunes adultes, ayant dépassés légèrement l'âge limite, savoir 17 ans, sont accusés d'infractions de moindre importance. La recommandation 22 renferme les mots suivants "dans les cas appropriés", sans cependant fournir de critères. En réalité, la recommandation

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JURIDICTION

TEXTE

9. (Suite)

apparaît au tribunal statuant sur déclaration sommaire de culpabilité que, compte tenu de la réputation de la personne et des circonstances entourant l'infraction, une telle ordonnance est pour le bien de la personne ou dans l'intérêt de la collectivité.

NOTES EXPLICATIVES

propose l'adoption "d'une procédure plus flexible quant à la façon de traiter le cas impliquant des jeunes qui ont légèrement dépassés l'âge limite prévu par la Loi sur les jeunes délinquants."

Le paragraphe 179 du Rapport note deux recommandations:

1) "l'adoption de mesures légales visant à permettre au juge ou au magistrat devant lequel comparaît un délinquant de 16 ou 18 ans, s'il estime que l'accusé bénéficierait d'un procès devant un tribunal pour mineurs, de traiter ce jeune conformément aux pouvoirs conférés par la loi concernant les jeunes délinquants."
(La Commission Archambault, 1938).

2) "... que le magistrat ait le pouvoir de renvoyer à un tribunal pour mineurs toute cause où l'infraction appartient à une catégorie de délits moins graves, lorsque l'accusé est un délinquant primaire. De plus, ce Comité propose que le magistrat

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JURIDICTION

TEXTE	NOTES EXPLICATIVES
9. (Suite)	reçoive "plein pouvoir pour renvoyer la cause, à sa discrétion, mais seulement à la requête de la Couronne après la mise en accusation mais avant le plaidoyer de l'accusé." (L'Association ontarienne des magistrats, 1962) Le Comité n'a pas indiqué laquelle des deux attitudes il favorise: "Nous nous contentons de proposer que les recommandations de la Commission Archambault et du Comité de l'Association ontarienne des magistrats fassent l'objet d'une étude plus poussée visant à l'adoption d'une de ces méthodes, ou peut-être des deux, ce qui serait un moyen d'assurer une flexibilité plus grande lorsqu'on est en face de délinquants de 17 ans, c'est-à-dire de délinquants d'un an plus âgés que l'âge limite que nous proposons." Il n'est pas facile de définir ce qui constitue, en soi, une infraction "de moindre importance". Le droit pénal distingue entre les infractions punissables par voie de mise en accusation et les infractions punissables par simple

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JURIDICTION

TEXTE	NOTES EXPLICATIVES
9. (Suite)	déclaration sommaire de culpabilité. A toutes fins pratiques, cette distinction reflète le jugement que porte le Parlement quant à la gravité d'une infraction. Les infractions punissables sur déclaration sommaire de culpabilité sont, on le suppose, les infractions de moindre importance auxquelles font allusion les magistrats ontariens. Toutefois, le Code criminel de même que d'autres lois fédérales prévoient des infractions qui peuvent être jugées par voie de mise en accusation ou selon la procédure des déclarations sommaires de culpabilité. Dans de tels cas, la Couronne, fixe à sa discrétion la procédure qu'elle entend suivre. Le choix de la procédure applicable dépend, dans la pratique, des circonstances qui entourent l'infraction. Le présent article adopte le critère qui oppose l'infraction punissable par voie de mise en accusation, à l'infraction punissable par voie de déclaration sommaire de culpabilité. Le renvoi d'un tribunal ordinaire à

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JURIDICTION

TEXTE	NOTES EXPLICATIVES
9. (Suite)	un tribunal pour mineurs ne s'appliquerait que dans le cas où l'infraction alléguée est punissable sur déclaration sommaire de culpabilité. Ces infractions sont les suivantes: art. 54, fait d'aider à un déserteur, art. 56, résistance à l'exécution d'un mandat de perquisition, art. 57, infractions relatives aux membres de la Gendarmerie royale du Canada, art. 67, fait de participer à un attroupement illégal, art. 81, fait de se livrer à un combat concerté, art. 84, port d'une arme dissimulée, art. 85,(2) fait de posséder une arme munie d'un amortisseur de son, art. 86, fait de braquer sur quelqu'un une arme à feu, art. 87, possession d'arme à une assemblée publique, art. 88(2)(3), 89, 90, 91 infractions relatives aux armes à feu,

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JURIDICTION

TEXTE	NOTES EXPLICATIVES
9. (Suite)	art. 111, fait de prétendre faussement d'être un agent de la paix,
	art. 123, offre de récompense et d'immunité,
	art. 158, actions indécentes,
	art. 159, nudité,
	art. 160, fait de troubler la paix publique,
	art. 161(2)(3) fait de troubler des offices religieux,
	art. 162, intrusion de nuit,
	art. 163, infractions relatives aux substances volatiles malfaisantes,
	art. 164, vagabondage,
	art. 176, entrave à l'exécution d'un mandat,
	art. 176(2), fait de se trouver dans une maison de jeux ou de pari,
	art. 183, transport de personnes à des maisons de débauche,
	art. 213, tentative de suicide,
	art. 226, possession d'un véhicule à moteur muni d'un appareil à fumée,
	art. 239(1), fait de communiquer une maladie vénérienne,
	art. 307, obtention frauduleuse de vivre et de logement,

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JURIDICTION

TEXTE	NOTES EXPLICATIVES
9. (Suite)	art. 308, infractions relatives à la magie, art. 315(2), propos indécents au téléphone, art. 341, fait de falsifier un registre d'emploi, art. 344, obtention de transport par faux connaissement, art. 347, fait de représenter faussement quelqu'un à un examen, art. 356, fait de se réclamer faussement de brevets de fournisseur de Sa Majesté, art. 362, emploi illégitime d'uniformes ou de certificats militaires, art. 366, intimidation, art. 367, fait pour un employeur de refuser d'employer un membre de syndicat, art. 369, émission de bons-primes, art. 373, dommages n'excédant pas $50.00, art. 378, fausse alerte, art. 379(2), entraves au sauvetage d'une épave, art. 380(1), dérangement des signaux de marine, art. 383, fait de déplacer des lignes de démarcation, ...

JURIDICTION

TEXTE	NOTES EXPLICATIVES
9. (Suite)	art. 386, fait de tuer ou de blesser des animaux, art. 387, cruauté envers les animaux, art. 388, infractions relatives au combat de coq, art. 389, infractions relatives au transport de bestiaux par rails, ou par eau, art. 390(2), fait de gêner les recherches dans un véhicule ou à bord d'un navire, art. 397, usage frauduleux de piécettes, art. 399, dégrader une pièce de monnaie courante, art. 400(2), impressions de circulaires ressemblant à des billets de banque. Certaines infractions peuvent être poursuivies soit par voie de mise en accusation ou soit selon la procédure applicable aux déclarations sommaires de culpabilité. Ce sont les infractions suivantes: art. 154, publication, distribution, etc., de textes obscènes, ...

JURIDICTION

TEXTE	NOTES EXPLICATIVES
9. (Suite)	art. 186(3), refus de fournir les choses nécessaires à l'existence, art. 221(1), négligence criminelle, art. 221(2), omission pour un automobiliste de demeurer sur le lieu d'un accident, art. 221(4), conduite dangereuse, art. 222, conduite en état d'ivresse art. 223, conduite alors que la capacité de conduire est affaiblie, art. 225(3), conduite pendant interdiction, art. 226A, conduite dangereuse d'un bateau, art. 231(1), voies de fait simples, art. 360(2), opérations illicites à l'égard d'approvisionnement public, art. 316(1)(b)(c), menaces, art. 350 à 354 incl., infractions relatives à la contre-façon de marques de commerce et de désignations de fabrique, art. 358, infractions relatives aux épaves, ...

JURIDICTION

TEXTE	NOTES EXPLICATIVES
9. (Suite)	art. 363, infractions relatives aux approvisionnements militaires, art. 365, violation de contrat. Dans de tels cas, il incombe au poursuivant de décider si l'infraction doit être poursuivie par voie de mise en accusation ou sous le régime des déclarations sommaires de culpabilité. Si la Couronne ne décide pas quel mode de poursuite doit s'appliquer, le magistrat en décide. A l'égard de telles infractions, la Couronne disposerait ainsi d'un pouvoir discrétionnaire qui lui permettrait d'empêcher qu'un jeune adulte soit renvoyé à un tribunal pour mineurs en décidant tout simplement de poursuivre par voie de mise en accusation. Lorsque la Couronne opte pour le régime des déclarations sommaires de culpabilité ou lorsque l'infraction ne peut être poursuivie que sous ce régime, il appartient au tribunal statuant sur déclaration sommaire de culpabilité de décider du renvoi, soit de son propre chef, soit à la demande de la Couronne. ....

JURIDICTION

TEXTE	NOTES EXPLICATIVES
9. (Suite)	L'article proposé donne au tribunal statuant sur déclaration sommaire de culpabilité le pouvoir de rendre une ordonnance de renvoi à tout moment avant le prononcé de la sentence. Cette façon de procéder diffère de la proposition qu'avait soumise l'Association des magistrats d'Ontario. Le Tribunal statuant sur déclaration sommaire de culpabilité devrait, estime-t-on, avoir la faculté de rendre une semblable ordonnance en pleine connaissance des circonstances de l'espèce. En vertu de la présente disposition, le Tribunal statuant sur déclaration sommaire de culpabilité peut avoir commencé le procès et se rendre compte au cours de l'instruction que la cause devrait être déférée à un tribunal pour mineurs. Il serait alors en mesure de rendre une ordonnance de renvoi, en tenant compte à la fois du bien de la personne et de l'intérêt de la collectivité. Cette façon de procéder est conforme aux voeux formulés par la Commission Archambault.

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JURIDICTION

TEXTE	NOTES EXPLICATIVES
9. (Suite)	Fait à noter: le présent article ne concorde pas avec la recommandation des magistrats d'Ontario à deux égards.
	(1) Le pouvoir discrétionnaire de la Cour n'est pas limité aux demandes formulées par la Couronne. En effet, la Couronne peut, comme on l'a dit ci-dessus, exercer cette discrétion et procéder par voie de mise en accusation, lorsqu'une autre façon de procéder est possible à l'égard des infractions énumérées ci-dessus.
	(2) Aucune directive n'a trait à l'absence de condamnations antérieures. L'article 638 du Code criminel contient une directive de ce genre. Cette disposition a fait l'objet de tellement de critiques, qu'on songe aujourd'hui à l'abroger. En outre, il semble que l'enquête que peut faire le Tribunal statuant sur déclaration sommaire de culpabilité sur la réputation du prévenu devrait le renseigner sur l'opportunité d'une ordonnance de renvoi.

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JURIDICTION

TEXTE	NOTES EXPLICATIVES
ARTICLE 421(3) DU CODE CRIMINEL	
10. (1) Lorsque le juge a décidé que la dénonciation contre un enfant ou un adolescent a été reconnue fondée et que cet enfant ou adolescent signifie par écrit devant le juge son intention de reconnaître les faits relatifs à une contravention ou à une transgression que l'on prétend commise par lui au Canada, hors de la province dans laquelle il a été traduit devant ce juge, si la contravention n'est pas une de celles que mentionne le paragraphe(2) de l'article 413 du Code criminel, et que le procureur général ou le sous-procureur général de la province où la contravention ou transgression aurait été commise, selon l'allégation, y consent, le juge est compétent pour rendre une décision au sujet de la contravention ou transgression imputée et pour prendre toutes mesures que prévoit la présente loi et qu'il estime appropriées.	Ce paragraphe est tiré de l'article 421(3) du Code criminel. La recommandation 68 du Rapport porte que le principe de l'article 421 du Code criminel devrait s'appliquer à l'égard des mineurs. Voir également le paragraphe 293 du Rapport. La contravention ou la transgression dont il est fait mention peut être une contravention ou une transgression à l'endroit d'une loi provinciale. Une telle disposition aurait pour effet de permettre à un tribunal d'une province de rendre une décision concernant une contravention ou une transgression à l'égard d'une loi d'une autre province. Il va de soi qu'une telle compétence ne saurait être accordée à un tribunal sans le consentement du procureur général de cette autre province ou de son adjoint.

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JURIDICTION

TEXTE	NOTES EXPLICATIVES
ARTICLE 421(A) DU CODE CRIMINEL	
10. (2) Lorsque, le juge a décidé que la dénonciation contre un enfant ou un adolescent a été reconnue fondée et que cet enfant ou cet adolescent signifie par écrit, devant ce juge, son intention de reconnaître les faits relatifs à une contravention ou une transgression que l'on prétend commise par lui à quelque autre endroit de la province dans laquelle il est traduit devant ce juge, si la contravention qui lui est imputée n'est pas l'une de celles que mentionne le paragraphe (2) de l'article 413 du Code criminel, le juge est compétent pour rendre une décision au sujet de la contravention ou transgression imputée et pour prendre toutes mesures que prévoit la présente loi et qu'il estime appropriées.	Ce paragraphe est adapté de l'article 421A du Code criminel et, même si le Rapport n'a fait aucune mention du présent article, on peut présumer que le même principe s'applique à l'égard du paragraphe (3) de l'article 421.

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JURIDICTION

TEXTE	NOTES EXPLICATIVES
10. (3) Nul écrit qu'un enfant ou qu'un adolescent souscrit selon le paragraphe (1) ou le paragraphe (2) n'est admissible en preuve contre lui dans des procédures criminelles.	Le présent paragraphe est tiré des articles 421(4) et 421A(2) du Code criminel. Le paragraphe (3) de l'article 421 et le paragraphe (1) de l'article 421A sont des dispositions du Code criminel qui ont trait à la "compétence spéciale", qui ont été spécifiquemment adaptées à la présente loi. Les autres dispositions relatives à la "compétence spéciale" comme l'article 419 (qui traite des infractions commises sur l'eau, au cours de voyages, sur des aéronefs, etc.), l'article 420 (infractions commises en eaux territoriales), l'article 421(1) (infractions entièrement commises dans une province), l'article 421(2) (libelle diffamatoire dans un journal), l'article 422 (infractions commises en un territoire non organisé), l'article 423 (infractions commises dans un endroit qui ne fait pas partie d'une province) n'ont pas été reproduites dans la présente loi. On a estimé qu'on pouvait s'y reporter dans leur contexte actuel et qu'il n'y avait pas lieu de les transposer spécifiquement dans

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JURIDICTION

TEXTE	NOTES EXPLICATIVES
10. (3) (Suite)	la présente loi. En raison de l'article 27 de la nouvelle Loi d'interprétation (l'article 28 de l'ancienne Loi d'interprétation) ces dispositions pourraient être applicables à toute infraction à l'une quelconque des lois du Canada.

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POUVOIRS DU JUGE ET DU TRIBUNAL

TEXTE	NOTES EXPLICATIVES
11. Tout juge dans l'exercice de sa juridiction en vertu de la présente loi possède tous les pouvoirs d'un magistrat.	Cet article reproduit le texte de l'article 6(1) actuel. Le juge d'un tribunal pour mineurs est par les présentes investi de l'autorité de deux ou plusieurs juges de paix. Voir le paragraphe (28) dé l'article 2 ainsi que l'article 425 du Code criminel. Les paragraphes (2) et (3) de l'article 6 actuel sont omis de la présente loi. Le paragraphe (2) attribue aux juges d'un tribunal pour mineurs, en ce qui concerne les mineurs contrevenants, tous les pouvoirs et toutes les fonctions que la Loi sur les prisons et les maisons de correction confère ou impose à un juge, à un magistrat stipendiaire, à un ou à des juges de paix. Le paragraphe (3) maintient la discrétion du juge d'un tribunal pour mineurs quant à la durée de la détention d'un jeune délinquant. Même si certaines dispositions de la Loi sur les prisons et les maisons de correction entrent en conflit ou font double emploi avec des dispositions du projet, (par exemple, les articles 26, 27, 28), il n'y a pas lieu, semble-t-il, de faire

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POUVOIRS DU JUGE ET DU TRIBUNAL

TEXTE	NOTES EXPLICATIVES
11. (Suite)	des renvois particuliers à la Loi sur les prisons et les maisons de correction étant donné que la loi projetée se propose de traiter à fond et complètement de la durée et du lieu de détention des contrevenants, et en vue également de l'article 5(2) de la présente loi. Il n'y a pas lieu d'invoquer la Loi sur les prisons et les maisons de correction pour donner au juge du tribunal pour mineurs des pouvoirs supplémentaires. Naturellement, cette loi continuera de s'appliquer aux adolescents contrevenants renvoyés devant les tribunaux ordinaires pour y subir leur procès et y recevoir leur condamnation.

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POUVOIRS DU JUGE ET DU TRIBUNAL

TEXTE	NOTES EXPLICATIVES
12. Pour maintenir l'ordre au sein du tribunal qu'il préside, tout juge possède les mêmes pouvoirs et la même autorité que ceux que peut exercer le tribunal supérieur de juridiction criminelle de la province, durant ses séances.	L'article 36(1) actuel de la Loi sur les jeunes délinquants donne aux tribunaux pour mineurs les mêmes pouvoirs et la même autorité que ceux dont jouissent tous les tribunaux au Canada en vue du maintien de l'ordre. Même si la phraséologie présentement en usage n'a, semble-t-il, suscité aucune difficulté, l'article proposé s'en écarte et adopte plutôt les termes utilisés par l'article 426 du Code criminel, qui ont fait l'objet de commentaires dans Re: Hawkins, 1965, 53 W.W.R., p. 406; dans cette cause, le juge Branca de la Cour suprême de la Colombie-Britannique (siégeant en Chambre) a soutenu que l'article 426 donne à un magistrat, qui n'est pas une Cour d'archives, l'autorité statutaire de punir pour un outrage au Tribunal commis lors de l'audience. Lorsque la loi provinciale qui établit un tribunal pour mineurs déclare que ce tribunal est une Cour d'archives, l'article proposé n'ajoute rien à la compétence que possède ce tribunal pour statuer sur les outrages au Tribunal commis lors de l'audience. Par

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POUVOIRS DU JUGE ET DU TRIBUNAL

TEXTE	NOTES EXPLICATIVES
12. (Suite)	contre, l'article proposé est utile dans les cas où un magistrat agit à titre de personne désignée, puisqu'alors il ne constitue pas une Cour d'archives.
13. (1) Un tribunal peut établir des règles de cour non incompatibles avec la présente loi du Parlement du Canada concernant les questions qui relèvent de la présente loi.	Voir la Recommandation 52 ainsi que le paragraphe 272. Le présent article est adapté de l'article 424 du Code criminel.

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POUVOIRS DU JUGE ET DU TRIBUNAL

TEXTE	NOTES EXPLICATIVES

13. (2) Les règles prévues au paragraphe (1) peuvent être établies

(a) d'une façon générale, pour réglementer les devoirs des fonctionnaires du Tribunal et toute autre question considérée comme propre à la réalisation des fins de la justice et à l'application des dispositions de la loi;

(b) pour réglementer la pratique et la procédure devant le tribunal;

(c) pour formuler des directives générales concernant l'admission, la détention, la sélection des cas, l'arrangement ou toute autre question que le Tribunal estime opportun de réglementer;

(3) Aucune règle établie en vertu du présent article ne sera en vigueur ni valide dans une province ou une circonscription territoriale de cette province à moins qu'elle n'ait été approuvée par le procureur général de la province.

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POUVOIRS DU JUGE ET DU TRIBUNAL

TEXTE	NOTES EXPLICATIVES
14. Tout juge peut dûment faire exécuter toute procédure ou ordonnance émise par lui en vertu de la présente loi par les moyens qu'indique la loi à cet égard relativement aux procédures d'autres tribunaux dans des cas semblables.	Cette disposition reproduit avec de légers changements l'article 36(2) de la Loi sur les jeunes délinquants.
15. (1) Le greffier d'un tribunal a, de droit, le pouvoir de faire prêter serment.	Texte actuel de l'article 11(1).
(2) Le greffier d'un tribunal a le pouvoir, en l'absence d'un juge, d'ajourner toute audition pour une période définie ne dépassant pas dix jours, sauf lorsqu'un enfant ou un adolescent est maintenu en détention autrement que sur ordonnance du juge rendue à la suite d'une audition sur la détention.	Le délai de 10 jours provient de l'article 11(1) de la Loi actuelle. C'est un délai arbitraire, susceptible de modifications.

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POUVOIRS DU JUGE ET DU TRIBUNAL

TEXTE	NOTES EXPLICATIVES
15. (3) Lorsqu'un enfant ou un adolescent est amené devant le tribunal, il appartient au greffier de ce tribunal d'adresser, ou de faire signifier, sous le contrôle d'un juge, tous les avis que peut nécessiter la présente loi et aussi de notifier par avance à l'agent de surveillance ou à l'agent de surveillance en chef le lieu où un enfant doit comparaître devant le tribunal pour audition en vertu de la présente loi.	On modifie l'article 11(2) actuel en prévoyant, outre l'obligation de signifier un avis à l'agent de surveillance, des responsabilités au sujet de tous les avis dont la Loi exige la signification.
16. (1) Lorsqu'une audition aux fins d'une décision est commencée par un juge et que ce dernier décède ou est, pour une raison quelconque, incapable de continuer l'audition, un autre juge de la même circonscription territoriale peut agir à la place du juge devant lequel l'audition a été commencée.	Cet article est tiré de l'article 698 du Code criminel.

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POUVOIRS DU JUGE ET DU TRIBUNAL

TEXTE

16. (2) Un juge qui, conformément au paragraphe (1), agit à la place d'un juge devant lequel une audition aux fins d'une décision a été commencée

(a) doit, si, conformément au paragraphe (1) de l'article 56, une décision a été rendue, poursuivre l'affaire de la manière prévue à l'article 57, ou

(b) doit, si aucune décision n'a été rendue conformément au paragraphe (1) de l'article 56, commencer de nouveau l'audition aux fins d'une décision.

(3) Lorsqu'une ordonnance de surveillance concernant un enfant contrevenant, un adolescent contrevenant ou un transgresseur est rendue par un juge qui décède par la suite ou est, pour un motif quelconque, incapable d'agir, un autre juge de la même juridiction territoriale peut rendre une ordonnance en vertu de l'article 63, de l'article 64, ou de l'article 65, selon le cas.

NOTES EXPLICATIVES

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POUVOIRS DU JUGE ET DU TRIBUNAL

TEXTE	NOTES EXPLICATIVES
17. En aucun cas relevant de la présente loi, un tribunal ou un juge ne peut ordonner que des frais soient acquittés par un enfant ou un adolescent.	Cette disposition a pour objet de donner suite au principe énoncé dans la recommandation 70 ainsi que dans le paragraphe 296. L'article 22(1) actuel de la Loi sur les jeunes délinquants laisse entendre qu'une telle ordonnance est possible. Le présent article est inséré ici de façon que le principe susmentionné ne soit pas oublié. Si la loi ne comportait aucune disposition complémentaire provenant d'autres sources, la mention de ce principe ne serait pas nécessaire; il suffirait de ne pas donner au tribunal le pouvoir de statuer sur les frais. D'autre part, si on estime opportun de rappeler aux juges l'existence de ce principe, le présent article devrait être inséré dans la partie de la loi qui traite de la décision à rendre.

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PROCÉDURE

TEXTE	NOTES EXPLICATIVES
ARRESTATION 18. (1) Quiconque arrête un enfant ou un adolescent sans mandat doit aussitôt livrer cet enfant ou cet adolescent à un agent de la paix et celui-ci doit traiter cet enfant ou cet adolescent de la manière prévue ci-après.	Cette disposition est adaptée de l'article 438(1) du Code criminel. Au paragraphe 211, le Comité, en se reportant à l'article 438(2) du Code criminel, a recommandé qu'une disposition semblable soit insérée dans la présente loi. Ce point particulier n'a pas été traité de façon expresse par le Comité. Une telle disposition pourrait être utile si on veut être bien explicite, puisque n'importe qui peut arrêter sans mandat une personne qu'elle trouve en train de commettre une infraction punissable par voie de mise en accusation (art. 434) ou s'il croit que cette personne, en se fondant sur des motifs raisonnables et probables, a commis une infraction criminelle et se sauve ou est poursuivie. (art. 436). Il y a lieu de se demander si un tel pouvoir d'arrestation devrait s'appliquer aux enfants contrevenants et aux adolescents contrevenants. On croit que la loi devait comporter une disposition de ce genre. En effet, un enfant ou un adolescent, trouvé en train de

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PROCÉDURE

TEXTE	NOTES EXPLICATIVES
18. (1) (Suite)	commettre un vol, des voies de fait, etc., devrait être passible d'arrestation immédiate par qui que ce soit.
18. (2) Un agent de la paix à qui on livre un enfant ou un adolescent qui a été arrêté sans mandat et qui le détient ou qui arrête un enfant ou un adolescent avec ou sans mandat, doit sans délai conduire ou faire conduire cet enfant ou cet adolescent devant le tribunal pour mineurs.	Cette disposition s'inspire de l'article 438(2) du Code criminel et est conforme au principe de l'article 8(1) actuel, qui exige que tous les cas soient déférés au tribunal pour mineurs. L'objet de ce paragraphe est double: 1) il assure une comparution rapide de l'enfant ou de la jeune personne devant la cour; 2) il prescrit en outre que cette comparution doit se faire devant un tribunal pour mineurs. Ainsi qu'on l'a noté ci-dessus, il réunit les principes énoncés à l'article 438(2) du Code criminel et ceux de l'article 8(1) de la loi actuelle sur les jeunes délinquants. Si on estime que l'expression "sans retard" impose une obligation trop lourde à la police, le mot "indu" pourrait

PROCÉDURE

TEXTE	NOTES EXPLICATIVES
18. (2) (Suite)	être ajouté. La recommandation 37 porte que la loi devrait clairement stipuler qu'il incombe aux autorités de produire promptement devant les tribunaux les jeunes personnes qui sont l'objet de poursuites en vertu de lois fédérales relatives aux mineurs.
19. Tout agent de police doit soumettre à l'attention du tribunal ou du juge tout enfant ou tout adolescent qu'il a des motifs raisonnables et probables de soupçonner d'avoir commis une contravention.	Cet article a pour objet de donner suite aux principes énoncés au paragraphe 197(1) du Rapport. Il s'agit d'un des principes formulés par le Comité afin "de parer aux dangers de décisions arbitraires et au manque d'harmonie entre les objectifs fixés par le législateur et les méthodes suivies lors de la mise en application de la Loi". (Recommandation 32) A la page 12 du Rapport de la Conférence de Couchiching sur la Justice et les adolescents, tenue du 16 au 18 avril 1967, apparaît le commentaire suivant:

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PROCÉDURE

TEXTE	NOTES EXPLICATIVES
19. (Suite)	"On a estimé que l'alinéa (1) du paragraphe 197 du Rapport manquait totalement de sens pratique au point de vue administratif et était en outre superflu". Ce principe est inséré dans l'avant-projet préparé aux fins d'étude afin d'attirer l'attention sur cette question.

PROCÉDURE

TEXTE	NOTES EXPLICATIVES
DÉNONCIATION	
20. (1) Un juge peut recevoir une dénonciation de quiconque croit, pour des motifs raisonnables et probables, qu'un enfant ou un adolescent a commis une contravention ou une transgression et il peut lorsqu'il estime qu'on en a établi la raison, lancer une sommation ou un mandat contraignant l'enfant ou l'adolescent à comparaître devant le tribunal pour mineurs.	

PROCÉDURE

TEXTE	NOTES EXPLICATIVES
DÉNONCIATION	
20. (2) Un juge a compétence exclusive pour recevoir une dénonciation en vertu du présent article.	Le sujet du présent paragraphe n'a fait l'objet d'aucune recommandation. L'article 8(1) actuel désigne le tribunal devant lequel l'enfant doit être conduit, sans mentionner quel tribunal peut décerner une sommation ou un mandat. Si le tribunal pour mineurs doit jouer un rôle utile de sélection, il doit être seul compétent à connaître des dénonciations portées contre des mineurs. Ce n'est là qu'une application du principe présentement énoncé dans l'article 8(1) qui prescrit que toutes les causes dans lesquelles un enfant est appréhendé avec ou sans un mandat soient portées devant un tribunal pour mineurs. L'article 8(1) actuel porte en outre que si un enfant comparaît devant un juge de paix en vertu d'une sommation ou d'un mandat, ou pour quelque autre raison, il appartient au juge de paix de déférer son cas au tribunal pour mineurs. On peut déduire qu'en vertu de l'article 8(1) actuel le juge de paix peut décerner une sommation

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TEXTE	NOTES EXPLICATIVES
20. (2) (Suite)	ou un mandat. En vertu de l'article proposé, le juge de paix n'a aucune compétence pour recevoir une dénonciation. En d'autres termes, il doit déférer au tribunal pour mineurs les personnes qui veulent déposer une plainte. Ce pouvoir exclusif du tribunal pour mineurs est nécessaire par suite des dispositions dont on a recommandé l'adoption en ce qui concerne les arrangements officieux, dans des cas où, à la suite d'une conférence préliminaire, il devient apparent qu'il n'y a pas lieu de déposer une plainte. (Voir le paragraphe 267)
(3) Une dénonciation faite en vertu du présent article doit contenir l'allégation que l'enfant ou l'adolescent a commis, en un lieu quelconque, une contravention ou une transgression sur laquelle il peut être statué dans la province où le juge du tribunal pour mineurs a juridiction et que l'enfant ou l'adolescent (a) se trouve ou est présumé se trouver, ou	La recommandation 53 et le paragraphe 258 préconisent une formule-type de dénonciation. Le présent paragraphe est tiré de l'article 439 du Code criminel.

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PROCÉDURE

TEXTE	NOTES EXPLICATIVES
20. (3) (Suite) (b) réside ou est présumé résider dans la juridiction territoriale du juge.	
(4) Une dénonciation faite sous le régime du présent article peut être rédigée selon la formule 2.	

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PROCÉDURE

TEXTE	NOTES EXPLICATIVES
SOMMATION À UN ENFANT OU UN ADOLESCENT	
Contenu	
21. (1) Une sommation doit	Ce texte a été adapté de l'article 441(1) du Code criminel.
(a) être adressée à l'enfant ou à l'adolescent;	
(b) énoncer brièvement la contravention ou la transgression à l'égard de laquelle une dénonciation a été faite contre l'enfant ou l'adolescent;	
(c) enjoindre à l'enfant ou à l'adolescent de comparaître aux temps et lieu qui y seront indiqués, et	
(d) énoncer clairement que l'enfant ou l'adolescent à qui la sommation est adressée a le droit d'être représenté par un avocat.	
(2) Une sommation peut être rédigée selon la formule 3.	

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PROCÉDURE

TEXTE	NOTES EXPLICATIVES
SOMMATION À UN ENFANT OU UN ADOLESCENT	
Signification par la poste	
21. (3) Une sommation adressée à un enfant ou adolescent peut lui être envoyée par la poste.	L'article 441 du Code criminel ne fait aucune mention de la signification de sommations par la poste; cependant, cette pratique est maintenant suivie tout au moins par certains tribunaux pour mineurs. Exiger une signification personnelle en premier lieu entraînerait pour les tribunaux des frais et des inconvénients. Pour l'instant, il en résulterait un problème de personnel et certains tribunaux seraient incapables de s'acquitter de ce surcroît de travail. Il y aurait lieu d'étudier plus à fond le principe de la signification par la poste.

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PROCÉDURE

TEXTE	NOTES EXPLICATIVES
SOMMATION À UN ENFANT OU UN ADOLESCENT Signification personnelle	
21. (4) Si un enfant ou un adolescent à qui une sommation a été envoyée par la poste ne comparaît pas aux temps et lieu indiqués dans la sommation à lui adressée par la poste, une deuxième sommation peut être lancée par le juge, laquelle devra être signifiée par un agent de la paix, ou par une autre personne désignée par le juge, qui doit la remettre personnellement à l'enfant ou l'adolescent auquel elle est adressée, ou si cet enfant ou adolescent ne peut commodément être trouvé, la remettre pour lui à sa dernière ou habituelle résidence entre les mains d'une personne qui l'habite et qui paraît être âgée d'au moins dix-sept ans.	Cette disposition relative à la signification personnelle est adaptée de l'article 441(3) du Code criminel. Selon le Code criminel, la signification doit être exécutée par un agent de la paix. Ce projet de loi ajoute les mots "ou autre personne désignée par le juge" puisque certains tribunaux par les membres de leur personnel.

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PROCÉDURE

TEXTE	NOTES EXPLICATIVES
MANDAT	
22. (1) Un mandat doit	Ce texte est adapté de l'article 442(1) du Code criminel.
(a) nommer ou décrire l'enfant ou l'adolescent;	
(b) indiquer brièvement la contravention ou la transgression pour laquelle une dénonciation a été faite contre cet enfant ou cet adolescent; et	
(c) ordonner que l'enfant ou l'adolescent soit arrêté et conduit devant le juge qui a décerné le mandat, ou devant un autre juge de la même juridiction territoriale afin que le juge statue sur son cas.	
(2) Un mandat demeure en vigueur jusqu'à ce qu'il soit exécuté et il n'est pas nécessaire d'en fixer le rapport à une date particulière.	Ce texte est adapté de l'article 442(2) du Code criminel.

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PROCÉDURE

TEXTE	NOTES EXPLICATIVES
22. (Suite) (3) Un mandat qu'autorise la présente loi doit être signé par le juge qui le décerne et il peut être adressé (a) à un agent de la paix, nommément désigné; (b) à un agent de la paix nommément désigné et à tous les autres agents de la paix de la juridiction territoriale du juge; ou (c) en général, à tous les agents de la paix de la juridiction territoriale du juge.	Cet article est une adaptation de l'article 443 du Code criminel.

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PROCÉDURE

TEXTE	NOTES EXPLICATIVES
MANDAT	
23. (1) Un juge peut décerner un mandat selon la formule 5 pour l'arrestation d'un enfant ou d'un adolescent, même si une sommation a déjà été émise pour requérir la comparution de l'enfant ou de l'adolescent.	Ce texte est une adaptation de l'article 444 du Code criminel.
(2) Quand (a) la signification d'une sommation est prouvée et que l'enfant ou que l'adolescent ne comparaît pas, ou (b) il ressort qu'une sommation ne peut être signifiée parce que l'enfant ou l'adolescent se soustrait à la signification, un juge peut décerner un mandat d'arrestation.	

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PROCÉDURE

TEXTE	NOTES EXPLICATIVES
EXÉCUTION DU MANDAT	
24. (1) Un mandat peut être executé par l'arrestation de l'enfant ou de l'adolescent (a) en tout lieu où il est trouvé dans la juridiction territoriale du juge qui a décerné le mandat, ou (b) en quelque lieu qu'il se trouve au Canada, dans le cas d'une poursuite immédiate.	Ce texte est une adaptation de l'article 445 du Code criminel.
(2) Un mandat peut être exécuté par une personne qui est (a) l'agent de la paix nommément désigné dans le mandat, ou (b) un des agents de la paix à qui il est adressé, que l'endroit où le mandat doit être exécuté soit ou non dans le territoire pour lequel cette personne est un agent de la paix.	

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PROCÉDURE

TEXTE	NOTES EXPLICATIVES
VISA DU MANDAT	
25. (1) Lorsqu'un mandat pour l'arrestation d'un enfant ou d'un adolescent ne peut pas être exécuté conformément à l'article 24, un juge dans le ressort duquel l'enfant ou l'adolescent se trouve ou est présumé se trouver, doit, sur demande, et sur preuve sous serment ou par affidavit de la signature du juge qui a décerné le mandat, autoriser l'exécution du mandat dans les limites de sa juridiction, en apposant sur le mandat un visa qui peut être selon la formule 6.	Cette disposition est une adaptation de l'article 447 du Code criminel. Elle embrasse le sujet traité par les paragraphes (3) et (4) de l'article 17 de la Loi actuelle sur les jeunes délinquants.
(2) Un visa apposé sur un mandat d'après le paragraphe (1), constitue une autorisation suffisante pour l'agent de la paix à qui il a été en premier lieu adressé et pour tous les agents de la paix de la juridiction territoriale du juge qui l'a visé, d'exécuter le mandat et d'amener l'enfant ou l'adolescent devant le juge qui a décerné le mandat.	

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PROCÉDURE

TEXTE	NOTES EXPLICATIVES
AVIS AUX PARENTS	
26. (1) Lorsqu'un juge a lancé une sommation destinée à un enfant ou à un adolescent, il doit émettre un avis de cette sommation destiné au père ou à la mère ou au tuteur de l'enfant ou de l'adolescent.	L'article 10 de la Loi actuelle sur les jeunes délinquants traite de l'avis à donner aux père et mère ou au tuteur de l'enfant. La première partie du paragraphe (1) de l'article 10 est ainsi conçue: "Un avis de l'audition de toute accusation de délit doit être dûment signifié au père ou à la mère ou au tuteur de l'enfant..." On ne définit nulle part ce qui constitue soit un "avis" soit "une signification"; cependant, la Cour suprême du Canada dans Gerald Smith and Her Majesty the Queen, R.C.S. (1959), p. 638, a exprimé l'avis qu'une lettre écrite par un agent de surveillance et adressée au père de l'enfant ne constitue pas un tel avis, même si, au cours de conversations téléphoniques entre l'agent de surveillance et l'enfant, le père a reconnu avoir reçu la lettre.

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PROCÉDURE

TEXTE	NOTES EXPLICATIVES
AVIS AUX PARENTS	
26. (2) Lorsqu'un enfant ou un adolescent est en détention en attendant une audition aux fins d'une décision, un avis de cette audition adressé au père ou à la mère ou au tuteur de cet enfant ou adolescent doit être émis par le juge.	Le Comité a recommandé que la responsabilité de l'avis soit attribuée au juge. (Paragraphe 253). Selon le Rapport, la forme de l'avis devrait être spécifiée. (Voir la recommandation 53, de même que le paragraphe 254).
(3) L'avis émis conformément aux paragraphes (1) et (2) doit	
(a) être par écrit;	
(b) indiquer le nom de l'enfant ou de l'adolescent que la dénonciation reçue par le juge concerne et qui fait l'objet d'une sommation lancée par le juge ou qui est détenu en attendant une audition aux fins d'une décision;	
(c) être adressé au père ou à la mère ou au tuteur de l'enfant ou de l'adolescent qui fait l'objet de la sommation lancée par le juge ou qui est détenu en attendant une audition aux fins d'une décision;	

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PROCÉDURE

TEXTE	NOTES EXPLICATIVES
26. (3) (Suite)	
(d) indiquer brièvement la contravention ou transgression pour laquelle une dénonciation a été faite contre cet enfant ou cet adolescent;	
(e) exiger que le père ou la mère ou les deux parents ou le tuteur comparaissent avec l'enfant ou l'adolescent nommé dans l'avis aux temps et lieu y indiqués;	"Le tribunal devrait également être autorisé à enjoindre au père et à la mère d'être présents à l'audition lorsque le tribunal est d'avis qu'il existe un conflit entre les parents de l'enfant quant à la conduite que ceux-ci doivent suivre à l'égard à l'enfant ou lorsque le tribunal estime que sa décision fera vraisemblablement naître un conflit entre les parents." (Rapport de la Conférence de Couchiching p. 26)
(f) informer la personne ou les personnes auxquelles il est adressé que le fait de ne pas se conformer à l'avis peut constituer un outrage au tribunal;	Cette disposition est établie en conformité des recommandations 86 et 54 et des paragraphes 255, 256 et 356 du Rapport. Les parents qui ne collaborent pas avec le tribunal sont passibles de sanction. L'article 14 de cet avant-projet prévoit que tout juge peut faire dûment exécuter toute sommation ou ordonnance légitime qu'il a émise sous le régime de la loi.

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PROCÉDURE

TEXTE	NOTES EXPLICATIVES
26. (3) (Suite)	
(g) tenir une copie de la sommation destinée à l'enfant avec lequel le père ou la mère ou les deux parents ou le tuteur sont requis de comparaître, si une sommation a été lancée; et	
(h) indiquer clairement que l'enfant ou l'adolescent nommé dans l'avis a le droit d'être représenté par un avocat.	Selon la recommandation 50 et le paragraphe 249, l'avis aux parents et aux tuteurs devrait spécifier que l'enfant a droit d'être représenté par un avocat.
26. (4) Un avis en vertu du présent article peut être rédigé selon la formule 7.	Le Rapport recommande une formule-type d'avis. (Voir la recommandation 53 ainsi que le paragraphe 254).
26. (5) Un avis émis selon le présent article peut être envoyé par la poste au lieu d'être signifié personnellement.	La signification par la poste semble être une façon judicieuse de procéder, puisqu'elle allège les tâches administratives qui incombent aux tribunaux pour mineurs.

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PROCÉDURE

TEXTE	NOTES EXPLICATIVES
26. (6) Si le père ou la mère ou le tuteur auxquels un avis conformément au présent article a été adressé par la poste ne comparaît pas avec l'enfant ou l'adolescent nommé dans l'avis aux temps et lieu y indiqués, un deuxième avis doit être émis par le juge, avis qui doit être signifié par un agent de la paix ou une personne désignée par le juge qui doit le remettre personnellement au père ou à la mère ou au tuteur à qui il est destiné ou, si cette personne ne peut commodément être trouvée, le remettre pour elle à sa dernière ou habituelle résidence entre les mains d'une personne qui l'habite et qui paraît être âgée d'au moins dix-sept ans.	Ce texte est une adaptation de l'article 441(3) du Code criminel.

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PROCÉDURE

TEXTE	NOTES EXPLICATIVES
26. (7) Lorsque le père, la mère ou le tuteur d'un enfant ou d'un adolescent comparaît devant le tribunal avec l'enfant ou l'adolescent, le juge peut se dispenser de l'avis prévu par le présent article.	Ce paragraphe vise en particulier le cas où un enfant ou un adolescent est arrêté de nuit et conduit devant le tribunal dès le lendemain matin. Dans un tel cas, la pratique suivie consiste, du moins dans certaines juridictions, à informer les parents par téléphone. Exiger dans ces circonstances l'envoi d'un avis écrit retarderait l'administration de la justice.

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PROCÉDURE

TEXTE	NOTES EXPLICATIVES
AVIS À UN AMI OU À UN MEMBRE DE LA FAMILLE AUTRE QUE LE PÈRE OU LA MÈRE	
27. (1) Lorsque le lieu où se trouvent les parents ou le tuteur d'un enfant ou d'un adolescent est inconnu ou lorsque, de l'avis d'un juge, un avis enjoignant aux parents ou au tuteur de comparaître devant le tribunal présenterait trop de difficultés, le juge peut se dispenser de l'avis prévu à l'article 26 et il peut, à sa discrétion, émettre un avis d'audition concernant un enfant ou un adolescent en l'adressant à un ami ou à un autre membre de la famille de l'enfant ou de l'adolescent qui peut comparaître avec cet enfant ou cet adolescent.	Le Comité a recommandé que les dispositions de la nouvelle loi relatives aux avis soient rendues plus souples. (Voir la recommandation 52 ainsi que le paragraphe 254).

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PROCÉDURE

TEXTE

NOTES EXPLICATIVES

AVIS À UN AMI OU À UN MEMBRE DE LA FAMILLE AUTRE QUE LE PERE OU LA MERE

27. (2) L'avis émis conformément au paragraphe (1) doit

(a) être par écrit;

(b) indiquer le nom de l'enfant ou de l'adolescent que la dénonciation reçue par le juge concerne et qui fait l'objet d'une sommation lancée par le juge ou qui est détenu en attendant une audition aux fins d'une décision;

(c) être adressé à un ami ou à un parent de l'enfant ou de l'adolescent qui fait l'objet de la sommation ou qui est détenu en attendant une audition aux fins d'une décision;

(d) indiquer brièvement la contravention ou la transgression pour laquelle une dénonciation a été reçue contre cet enfant ou cet adolescent;

(e) indiquer que l'ami ou le parent auquel l'avis est adressé peut comparaître avec l'enfant ou l'adolescent nommé dans l'avis aux temps et lieu y indiqués;

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PROCÉDURE

TEXTE	NOTES EXPLICATIVES
27. (2) (Suite)	
(f) tenir une copie de la sommation destinée à l'enfant ou à l'adolescent avec lequel l'ami ou le parent peut comparaître, si une telle sommation a été lancée; et	
(g) indiquer clairement que l'enfant ou l'adolescent nommé dans l'avis a le droit d'être représenté par un avocat.	
27. (3) Un avis en vertu du présent article peut être rédigé selon la formule 8.	
27. (4) Un avis émis en vertu du présent article doit être envoyé par la poste à l'ami ou au membre de la famille auquel il est adressé.	

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ARRANGEMENT

TEXTE	NOTES EXPLICATIVES
ARRANGEMENT	
28. (1) Lorsque, en vertu de l'article 20, un juge a la conviction q u'il y a preuve ou motif suffisant pour qu'une dénonciation puisse raisonnablement être reçue, il peut autoriser un agent de surveillance à s'entretenir avec l'enfant ou l'adolescent dont on croit qu'il a commis une contravention ou une transgression, ses père, mère ou tuteur et autres personnes intéressées et à examiner la question de savoir s'il est opportun de recevoir la dénonciation et s'il est possible d'arranger l'affaire sans que soit faite une dénonciation.	Voir la recommandation 58 ainsi que le paragraphe 269. Le Comité a déclaré que la pratique des arrangements (informal adjustment), que les tribunaux ont développée sans la sanction de la loi, devrait être maintenue avec certaines restrictions et règlementée de façon précise par la loi. Le paragraphe 268 formule certains arguments en faveur de cette façon de procéder. La loi de l'Etat de New-York offre selon le Comité une solution acceptable aux problèmes que présentent ces arrangements. Le présent article s'inspire largement de l'article 734 de la Loi de New-York et de l'article 3-8 de la Loi de l'Illinois. Cependant, le Comité a proposé que ces arrangements officieux ne devraient être permis que (1) lorsque l'enquête de la police indique clairement qu'une infraction a été commise, (2) lorsque le bien-fondé de la plainte est admis par l'enfant, et que (3) les parents y consentent expressé-

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ARRANGEMENT

TEXTE	NOTES EXPLICATIVES
28. (1) (Suite)	ment. Dans tous les cas, les tentatives visant à effectuer des arrangements de ce genre devraient être limitées à une période d'au plus deux mois. Ce délai est prévu par le paragraphe (6) et les conditions portant les numéros (2) et (3) sont prévues au paragraphe (7). La première condition est incorporée, avec certaines modifications, au paragraphe (1); on a estimé que si le juge est convaincu qu'une dénonciation peut être reçue, cela implique qu'une infraction a été commise. Le juge ne peut ordonner un entretien que dans les cas où une dénonciation pourrait être reçue: c'est-à-dire dans les cas où le juge est convaincu que les allégations de la personne qui cherche à faire une dénonciation sont raisonnablement fondées.
28. (2) Lorsqu'un enfant ou un adolescent est détenu, la tenue d'un entretien en vertu du présent article ne doit pas avoir pour effet de prolonger la détention de cet enfant ou de cet adolescent au-delà de la période permise par l'article 29.	

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ARRANGEMENT

TEXTE	NOTES EXPLICATIVES
RÈGLEMENT OFFICIEUX	
28. (3) En aucun cas, l'agent de surveillance ne peut empêcher qu'une dénonciation soit faite par toute personne qui désire la faire en vertu de la présente loi.	Ce paragraphe est une reproduction presque identique de l'article 734(b) de la loi de l'Etat de New-York et de l'article 3-8(3) de la loi de l'Etat de l'Illinois. Le juge peut de toute évidence exercer sa discrétion lorsqu'il reçoit une dénonciation, comme le prévoit l'article 20. A ce sujet, on pourrait prétendre avec raison que rien ne devrait limiter le pouvoir du tribunal d'autoriser ou de refuser une dénonciation. Dans une brochure intitulée "Juvenile Court Intake", M. William H. Sheridan du Children's Bureau de Washington étudie cette question. Il consacre les pages 141 à 144 à l'étude de la question de savoir s'il convient que seul le tribunal soit autorisé à permettre ou à rejeter une requête. A la page 141, après avoir mis en doute l'opportunité de confier au tribunal le pouvoir de rejeter une requête dans des causes civiles relatives à l'adoption, etc., il poursuit:

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ARRANGEMENT

TEXTE	NOTES EXPLICATIVES
28. (3) (Suite)	"Les causes de délinquance peuvent être considérées sous un aspect différent, du moins celles qui comportent une infraction qui, si elle avait été commise par un adulte, constituerait un crime. Ici, le ministère public est habituellement partie à l'action et la sélection jouerait un rôle analogue à celui de la poursuite dans une cause criminelle. Sur le plan des principes, il semble qu'il soit judicieux d'autoriser le tribunal à rejeter une requête dans des cas de délinquance, puisque on évite ainsi d'encombrer le tribunal de plaintes sans conséquence, souvent inspirées par un motif de vengeance et d'animosité engendré par des querelles entre conjoints. Les cas de ce genre peuvent être habituellement traités d'autre façon. En fait, il est généralement reconnu que, pour éliminer des cas de ce genre, il suffit que la police ait et continue d'avoir l'autorité nécessaire pour déférer ces cas au tribunal."

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ARRANGEMENT

TEXTE	NOTES EXPLICATIVES
28. (3) (Suite)	Aux pages 143 et 144, M. Sheridan, en commentant la loi de l'Etat de New-York qui renferme une disposition semblable au paragraphe (3) ci-contre, a mis en doute la disposition prévoyant un droit absolu de présenter une requête dans des cas de délinquance. "Il est intéressant de noter, déclare-t-il, que le Family Court Act récemment adopté par l'Etat de New-York porte qu'une procédure préliminaire, semblable en ce qui concerne la négligence et la délinquance, peut être autorisée par une règle de la Cour. Cette mesure n'est pas obligatoire et prévoit de façon expresse que le service de surveillance "ne peut pas empêcher" une personne de produire une pétition. Cette façon de procéder permet que des arrangements soient faits dès le début des procédures, mais comprend des dispositions conçues pour protéger les droits des parties engagées dans cette voie. Ainsi la période est limitée à deux mois sans qu'il y ait lieu de demander l'autorisation du juge qui a la faculté d'accorder

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ARRANGEMENT

TEXTE	NOTES EXPLICATIVES
28. (3) (Suite)	un prolongement de 30 jours supplémentaires. En outre, on ne peut empêcher une personne de produire une requête ni la contraindre de comparaître à une conférence quelconque, de produire des documents ou de visiter certains endroits. Une disposition prévoit de plus qu'aucune déclaration faite à une conférence préliminaire n'est admissible lors d'une audition en vue d'une décision devant un tribunal familial ou dans une procédure devant un tribunal criminel avant la déclaration de culpabilité. Ces garanties ont déjà été incorporées dans les règles de la cour. Le droit absolu de déposer une requête dans des cas de délinquance est discutable, mais les autres dispositions semblent raisonnables et nécessaires."

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ARRANGEMENT

TEXTE	NOTES EXPLICATIVES
RÈGLEMENT OFFICIEUX	
28. (4) Un agent de surveillance agissant en vertu du présent article n'est pas autorisé à forcer quelque personne à comparaître à l'entretien, à produire des documents, ou à se rendre en quelque endroit.	Ce texte est tiré de l'article 3-8(4) de la loi de l'Etat de l'Illinois et de l'article 734(d) de l'Etat de New-York. Il n'y a pas lieu d'expliquer plus avant ce paragraphe, puisque toute disposition contraire donnerait à l'agent de surveillance des pouvoirs exorbitants.
28. (5) Aucune déclaration faite à l'occasion de l'entretien préliminaire ou au cours de celui-ci, ne doit être utilisée ou reçue en preuve lors d'une audition aux fins d'une décision ou à l'occasion de tout procès se déroulant par la suite.	Ce paragraphe est une adaptation de l'article 3-8(5) de la loi de l'Etat de l'Illinois et de l'article 735 de la loi de l'Etat de New-York, tout comme de l'article 5 de la Loi sur la preuve au Canada. Ce paragraphe découle normalement du caractère non judiciaire de l'entretien.
28. (6) Une tentative d'arrangement en vertu du présent article ne doit pas s'étendre sur une période de plus de 2 mois.	Ce délai de deux mois a été recommandé par le Comité au paragraphe 269 et à la recommandation 58.

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ARRANGEMENT

TEXTE	NOTES EXPLICATIVES
RÈGLEMENT OFFICIEUX	
28. (7) Aucun arrangement ne devra intervenir en vertu du présent article à moins que (a) l'enfant ou l'adolescent n'admette l'essentiel de la plainte; et (b) que le consentement écrit de ses père ou mère ou de son tuteur n'ait été obtenu.	Ces deux conditions préalables à un arrangement ont été recommandées au paragraphe 269 du Rapport et à la recommandation 58. Il va de soi que la réussite de tout arrangement suppose la collaboration de l'enfant ou de l'adolescent, de même que celle de ses parents ou de son tuteur.
28. (8) Avant l'expiration de la période mentionnée au paragraphe (6), l'agent de surveillance doit faire rapport au juge, par écrit, (a) des conditions de l'arrangement, ou (b) du fait qu'aucun arrangement acceptable n'a pu intervenir.	Il n'y a eu aucune recommandation à cet égard; cependant, l'obligation de signaler dans un rapport au juge les modalités d'un arrangement quelconque constitue un moyen d'assurer un contrôle juridique. Un rapport signalant qu'aucun arrangement n'a été possible ne doit pas exposer les motifs qui ont empêcher qu'on en vienne à un tel arrangement, car autrement les droits de l'enfant à une audition impartiale pourraient être compromis si le tribunal prenait connaissance avant l'audition des éléments de la preuve.

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ARRANGEMENT

TEXTE	NOTES EXPLICATIVES
RÈGLEMENT OFFICIEUX	
28. (9) Lorsqu'une personne désirant faire une dénonciation s'oppose à un arrangement, ou lorsqu'un rapport est fait en conformité de l'alinéa (b) du paragraphe (8), le juge doit procéder selon l'article 20.	
28. (10) Aucun règlement ne doit intervenir en vertu du présent article lorsqu'il apparaît (a) que la contravention alléguée implique un risque de lésions corporelles graves, ou (b) que le prétendu contrevenant ou transgresseur, selon le cas, a déjà fait preuve d'une conduite antisociale et qu'une comparution devant un tribunal semble nécessaire ou désirable.	Les principes dont s'inspire cette disposition sont énoncés au paragraphe 197(2)(a) et (b) du Rapport.
28. (11) Le tribunal doit conserver des archives de tous les cas où un arrangement est intervenu conformément au présent article.	L'alinéa (3) du paragraphe 197 du Rapport se lit ainsi qu'il suit: "Il faudrait tenir à jour des dossiers sur tous les enfants dont le cas a fait l'objet ....

ARRANGEMENT

TEXTE	NOTES EXPLICATIVES
REGLEMENT OFFICIEUX	
28. (11) (Suite)	d'une solution officieuse, de sorte que si un enfant est traduit en justice, le juge soit au courant du comportement anti-social passé de cet enfant." Le principe de "l'arrangement" ou de la "solution officieuse" est maintenant contenu à l'article 70 de la Loi sur les prisons et les maisons de correction, article relatif à la province d'Ontario. Cet article oblige le tribunal, lorsqu'il est saisi d'une plainte concernant un garçon de moins de 12 ans ou une fille de moins de 13 ans, de s'entretenir avec le dirigeant d'une société de protection de l'enfance. Le paragraphe (2) prévoit une entretien semblable à celui qu'entrevoit l'article 28 du présent projet de loi. Le paragraphe (3) porte que, lorsqu'il y va de l'intérêt public et du bien-être de l'enfant, le tribunal puisse disposer de l'affaire sans formalité, "au lieu d'instruire le procès de l'enfant, ou de prononcer sentence contre lui, selon le cas".

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ARRANGEMENT

TEXTE	NOTES EXPLICATIVES
28. (11) (Suite)	Le tribunal peut alors "confier" l'enfant à une personne compétente, le placer dans un foyer nourricier, imposer une amende de dix dollars au plus, suspendre la sentence pour une période déterminée ou pour une période indéterminée, ou, si l'enfant a été déclaré coupable ou est indocile, le tribunal peut envoyer l'enfant à une école industrielle ou dans une maison de correction ou dans un refuge pour filles.

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DÉTENTION

TEXTE	NOTES EXPLICATIVES
DÉTENTION PRÉVENTIVE	
29. (1) Lorsqu'un enfant ou un adolescent est traduit devant le tribunal, il doit être immédiatement confié à la garde de son père ou de sa mère ou de son tuteur, à moins qu'un agent de surveillance ou une autre personne désignée par le tribunal, ne soit d'avis que la question de la détention devrait être renvoyée à un juge ou à moins que l'enfant ou l'adolescent n'ait été arrêté en vertu d'un mandat.	Exception faite du principe énoncé à l'article 30 de cet avant-projet, le Rapport ne renferme aucune recommandation précise au sujet de la détention. Le Comité s'est davantage préoccupé des maisons de détention que du contrôle judiciaire exercé sur les détenus. Toutefois, dans le renvoi 22 qui apparaît à la page 128, le Rapport cite l'article 17 de la Standard Juvenile Court Act, que le Comité semble approuver. Etant donné les principes relatifs à la détention (recommandation 36, qui est incorporée à l'article 30 du présent projet de loi), et le principe énoncé au paragraphe 197(4) au sujet de la détention physique d'un enfant par la police, il semble qu'une disposition quelconque semblable à ce que propose le présent article devrait être édictée. L'objet de cette disposition est de prévoir une procédure aux termes de laquelle la détention d'un enfant ou d'un adolescent ferait sans délai l'objet d'une enquête, dans le

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DÉTENTION

TEXTE	NOTES EXPLICATIVES
29. (1) (Suite)	dessein d'ordonner sa mise en liberté, sauf si les circonstances indiquent que cette décision devrait être laissée à un juge, auquel cas un juge tiendrait alors une audition sur la question de la détention, après qu'un avis de cette audition aurait été adressé au père ou à la mère de l'enfant. (Paragraphe 3).
29. (2) A moins d'être relâché plus tôt, un enfant ou un adolescent doit être traduit devant un juge dans les 24 heures, à l'exclusion des dimanches et jours fériés, aux fins d'une audition statuant sur la détention en vue de déterminer s'il doit continuer à demeurer en détention.	Le délai prévu au paragraphe (2) est le même que celui qu'accorde l'article 438 du Code criminel.

AVIS AUX PARENTS

29. (3) Lorsqu'un enfant ou un adolescent est amené devant le tribunal et qu'il n'est pas relâché en vertu du paragraphe (1), son père ou sa mère ou son tuteur doit en être informé par un avis écrit indiquant la raison pour laquelle il n'a pas été relâché plus tôt et fixant les temps et lieu de l'audition devant statuer sur la détention.

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DÉTENTION

TEXTE

NOTES EXPLICATIVES

AVIS AUX PARENTS

29. (4) Un avis en conformité du paragraphe (3) doit être émis conformément à l'article 26, mutatis mutandis.

DÉTENTION

TEXTE	NOTES EXPLICATIVES
RESTRICTIONS QUANT À LA DÉTENTION	
30. Aucun enfant ou adolescent ne doit être détenu en attendant une audition aux fins d'une décision	Les alinéas (a), (b) et (c) du présent article ont pour objet de donner suite aux principes contenus dans la recommandation 36 et dans le paragraphe 209. Ces principes ont été formulés par la National Probation and Parole Association (maintenant le National Council on Crime and Delinquency) des Etats-Unis.
(a) à moins qu'on n'ait la quasi-certitude qu'il ne s'échappe au cours de la procédure, ou	
(b) à moins qu'on n'ait la quasi-certitude qu'il ne commette une faute qui risque de lui faire tort ou de faire tort à la collectivité, ou	
(c) à moins qu'il n'ait transgressé les conditions de la libération conditionnelle ou ne se soit échappé d'une institution à laquelle il avait été confié par un tribunal ou	
(d) à moins qu'il n'y ait aucun endroit convenable où l'enfant ou l'adolescent puisse aller s'il est relâché.	Le rapport de la Conférence de Couchiching sur la "Justice et les adolescents", met en doute les restrictions contenues aux alinéas (a), (b) et (c) et se demande si ces considérations sont suffisantes. On trouve à la page 15 les deux questions suivantes:

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DÉTENTION

TEXTE	NOTES EXPLICATIVES
30. (Suite)	" (i) prévoit-on le cas de l'enfant qui ne veut pas rentrer chez lui avant sa comparution devant le tribunal? Ce cas devrait être prévu (ii) prévoit-on le cas d'un enfant que la Société de protection de l'enfance ne peut pas diriger avant que l'enfant comparaisse devant le tribunal?" L'alinéa (d) a pour objet de prévoir ces situations.

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DÉTENTION

TEXTE	NOTES EXPLICATIVES
DÉTENTION AILLEURS QU'AVEC DES ADULTES	
31. (1) Aucun enfant ou adolescent, en attendant une audition aux fins d'une décision, ne doit être détenu dans une prison de comté ou autre ni dans un autre lieu où des adultes sont ou peuvent être emprisonnés; mais il doit être gardé dans une maison de détention ou un refuge à l'usage exclusif des enfants ou des adolescents ou sous telle autre surveillance approuvée par le juge ou un fonctionnaire dûment autorisé du tribunal.	Ce texte est une adaptation de l'article 13(1) actuel.
(2) Quiconque enfreint les dispositions du présent article est coupable d'une infraction punissable sur déclaration sommaire de culpabilité.	
(3) Le présent article ne s'applique pas à un adolescent à l'égard duquel une ordonnance a été rendue en conformité de l'alinéa (a) du paragraphe (1) de l'article 53.	Ce texte est une adaptation de l'article 13(3) actuel.

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DÉTENTION

TEXTE	NOTES EXPLICATIVES
31. (4) Un enfant ou un adolescent qui nécessite des soins en dehors de son foyer, mais qui n'a pas besoin d'être assujetti à une restriction de liberté peut être confié temporairement à un foyer familial nourricier ou à un autre refuge désigné par le tribunal.	

DÉTENTION

TEXTE	NOTES EXPLICATIVES
POUR ÉVITER LA DETENTION	
31. (5) En vue d'éviter la détention, la promesse souscrite par toute personne digne de confiance de se porter garante de la présence de l'enfant ou de l'adolescent, lorsque cette présence sera exigée, peut être acceptée.	Ce texte est une adaptation de l'article 14(2) actuel, auquel il a été donnée une application plus générale. Il est intéressant de noter la recommandation 241, à la page 268 du Rapport du Comité spécial de la législature d'Ontario chargé d'étudier les problèmes propres à la jeunesse; en voici le texte: "Aucun enfant ne doit être placé dans une institution de détention s'il est possible de loger cet enfant soit dans son propre foyer soit chez un parent responsable, soit avec une personne intéressée dont le choix a été approuvé." Le présent projet de loi ne fait aucune mention de cautionnement; en décidant de procéder ainsi, on s'est reporté à la recommandation 243, qui apparaît à la page 268 du Rapport du Comité spécial de la législature d'Ontario, chargé d'étudier les problèmes de la jeunesse, que voici: "Le cautionnement ne devrait même pas entrer en ligne de compte lorsque des mineurs sont en cause. Un enfant doit être ou détenu ou remis en liberté. Des considéra-

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DÉTENTION

TEXTE	NOTES EXPLICATIVES
31. (5) (Suite)	tions d'ordre monétaire ne constituent pas un critère en matière de détention d'enfants." Dans une brochure intitulée "Reforming the Bail System", qui reproduit un discours prononcé à Kingston le 22 février 1966, devant la John Howard Society de Kingston, le professeur M.L. Friedland a défendu et exposé le principe selon lequel l'argent n'est pas un facteur à considérer lorsqu'il s'agit de décider si un accusé doit ou ne doit pas être détenu. Voir notamment les pages 7, 8 et 9. Le rapport du Conseil législatif (1955) concernant le Children's Code du Wisconsin est absolument intransigeant dans son opposition au cautionnement et cite, en l'approuvant, des extraits de la Standard Juvenile Court Act. À la page 41 de l'édition courante (1959) de la Standard Juvenile Court Act, on peut lire le commentaire suivant: "La décision en ce qui concerne la détention ou la mise en liberté d'un enfant ne devrait nullement reposer sur la disponibilité d'un

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DÉTENTION

TEXTE	NOTES EXPLICATIVES
31. (5) (Suite)	cautionnement. En conséquence, les dispositions relatives au cautionnement pour les délinquants adultes ne s'appliquent pas aux enfants qui ressortissent à ce tribunal. Cette prise de position suppose, toutefois, que des locaux de détention et qu'une procédure à cet égard ont été prévus. Dans certaines situations, dont il est fait mention dans l'article, le cautionnement devrait être permis. Dans de tels cas, l'enfant demeure placé, cela va de soi, sous l'autorité du tribunal." Il est fait mention de l'article 17.6; en voici le texte: "Les dispositions relatives au cautionnement ne sont pas applicables aux enfants détenus en conformité des dispositions de la présente loi, sauf que le cautionnement peut être autorisé lorsqu'un enfant qui ne devrait pas être détenu demeure hors de la juridiction territoriale de la cour." A la page 487 de l'article intitulé "The California Juvenile Court" reproduit dans la Stanford Law Review de mai 1958, (vol. 10, n° 3) se trouve la déclaration suivante: ....

DÉTENTION

TEXTE	NOTES EXPLICATIVES
31. (5) (Suite)	"La mise en liberté en attendant l'audition devrait dépendre, non de l'aptitude financière à fournir un cautionnement, mais de la décision du tribunal pour mineurs quant à savoir si un adolescent doit être détenu ou non en attendant une audition formelle. Le recours sans discernement au cautionnement peut priver un adolescent gravement troublé des soins médicaux dont il a besoin et peut agraver son état en le replaçant dans le milieu qui a été la cause de son mal. Pour ces motifs, il est recommandé que l'article 828 du Welfare Code, autorisant le cautionnement à la discrétion du juge de première instance, soit abrogé."
31. (6) Le présent article ne s'applique pas à un enfant apparemment âgé de plus de quatorze ans qui, de l'avis du juge ou, en son absence, du shérif ou, en l'absence du juge et du shérif, du maire ou autre principal magistrat de la cité, de la ville, du comté ou du lieu, ne peut être détenu en sûreté dans un endroit autre qu'une prison ou un poste de police.	Ce texte reproduit l'article 13(4) actuel de la Loi sur les jeunes délinquants.

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PROCÉDURE À L'AUDITION

TEXTE	NOTES EXPLICATIVES
32. (1) Aucune audition relevant de la présente loi ne doit être tenue à moins qu'une dénonciation rédigée selon la formule 2 n'ait été reçue par un juge d'un tribunal pour mineurs.	Voici une adaptation de l'article 695(1) du Code criminel. Les articles 32 et 44 du présent avant-projet sont des adaptations du Code criminel. Une autre solution consisterait à insérer ici un article de renvoi, semblable à l'article 5(1) de la loi actuelle sur les jeunes délinquants, qui porterait que les poursuites et les procès prévus par la présente loi seraient régis par les dispositions du Code criminel relatives aux déclarations sommaires de culpabilité, sauf lorsqu'elles entrent en conflit avec des dispositions particulières de la présente loi.
32. (2) Rien dans la présente loi ou quelque autre loi n'est censé exiger qu'un juge, devant qui une audition aux fins d'une décision est tenue, soit le juge par qui la dénonciation a été reçue ou devant qui l'audition statuant sur la détention a été tenue.	Ce texte est une adaptation de l'article 697(1) du Code criminel.

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PROCÉDURE À L'AUDITION

TEXTE	NOTES EXPLICATIVES
DÉNONCIATION	
33. Dans les procédures aux quelles la présente Partie s'applique, la dénonciation (a) doit être établie par écrit et sous serment, et (b) elle peut imputer plus d'une contravention ou transgression, ou elle peut imputer des contraventions et des transgressions, mais lorsque plus d'une contravention ou d'une transgression est imputée, chaque contravention ou transgression doit être énoncée sous un chef distinct.	Ce texte est une adaptation de l'article 696(1) du Code criminel.

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PROCÉDURE À L'AUDITION

TEXTE	NOTES EXPLICATIVES
CHEFS D'ACCUSATION DANS UNE DÉNONCIATION	
34. (1) Chaque chef d'accusation dans une dénonciation doit, en général, s'appliquer à une seule affaire; il doit contenir et il suffit qu'il contienne en substance une déclaration portant que l'enfant ou l'adolescent a commis une contravention ou une transgression y spécifiée.	Cet article reproduit les articles 492 et 701(1) du Code criminel.
(2) La déclaration mentionnée au paragraphe (1) peut être faite	
(a) en langage courant sans expressions techniques ni allégations de choses dont la preuve n'est pas essentielle;	
(b) dans les termes mêmes de la disposition qui décrit la contravention ou la transgression;	
(c) en des termes suffisants pour donner au prétendu contrevenant ou transgresseur avis de la contravention ou de la transgression dont il est accusé.	

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PROCÉDURE À L'AUDITION

TEXTE	NOTES EXPLICATIVES
34. (3) Un chef d'accusation doit contenir, au sujet des circonstances de la contravention ou transgression alléguée, des détails suffisants pour renseigner raisonnablement le prétendu contrevenant ou transgresseur sur l'affaire et pour l'identifier, mais autrement l'absence ou l'insuffisance de détails ne vicie pas le chef d'accusation.	
(4) Un chef d'accusation peut se référer à tout article, paragraphe, alinéa ou sous-alinéa de la disposition qui crée, conformément à la présente loi, la contravention ou la transgression, et pour déterminer si un chef d'accusation est suffisant, il doit être tenu compte d'un tel renvoi.	Ce texte reproduit l'article 492(5) du Code criminel.

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PROCÉDURE À L'AUDITION

TEXTE	NOTES EXPLICATIVES
SUFFISANCE DES CHEFS D'ACCUSATION	
35. Aucun chef d'accusation dans une dénonciation n'est insuffisant en raison de l'absence de détails lorsque, d'après le tribunal, le chef d'accusation répond autrement aux exigences de l'article 34, et, sans restreindre la généralité de ce qui précède, nul chef d'accusation dans une dénonciation n'est insuffisant du seul fait	Ce texte reproduit l'article 493 du Code criminel.
(a) qu'il ne nomme pas la personne lésée ou qu'on a eu l'intention ou qu'on a tenté de léser;	
(b) qu'il ne nomme pas la personne qui est le propriétaire d'un bien mentionné dans le chef d'accusation ou qui a un droit de propriété ou intérêt spécial dans ce bien;	
(c) qu'il impute une intention de frauder sans nommer ou décrire la personne qu'on avait l'intention de frauder;	
(d) qu'il n'énonce aucun écrit faisant le sujet de l'inculpation;	

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PROCÉDURE À L'AUDITION

TEXTE	NOTES EXPLICATIVES
35. (Suite)	
(e) qu'il n'énonce pas les mots employés lorsque ceux que l'on prétend avoir été employés font le sujet de l'inculpation;	
(f) qu'il ne spécifie pas le moyen par lequel l'infraction alléguée a été commise;	
(g) qu'il ne nomme ni ne décrit avec précision une personne, un endroit ou une chose; ou	
(h) qu'il ne déclare pas, dans le cas où le consentement d'une personne, d'un fonctionnaire ou d'une autorité est requis avant que des procédures puissent être intentées pour une contravention ou une transgression, que ce consentement a été obtenu.	

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PROCÉDURE À L'AUDITION

TEXTE	NOTES EXPLICATIVES
DÉTAILS	
36. Le tribunal peut, s'il le juge nécessaire pour l'équité de l'audition, ordonner qu'un détail décrivant plus amplement toute matière relative aux procédures soit fourni au prétendu contrevenant ou transgresseur.	Ce texte reproduit l'article 701(2) du Code criminel.
37. Il n'est pas nécessaire qu'une exception, exemption, réserve, excuse ou limitation prescrite par la loi soit énoncée ou niée, selon le cas, dans une dénonciation.	Ce texte reproduit l'article 702(1) du Code criminel.

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PROCÉDURE À L'AUDITION

TEXTE	NOTES EXPLICATIVES
IRRÉGULARITÉS ET OBJECTIONS	
38. (1) Toute objection à une dénonciation pour une irrégularité apparente à sa face doit être présentée par voie de motion demandant que la dénonciation soit annulée avant que le prétendu contrevenant ou transgresseur ait plaidé et, par la suite, du seul consentement du tribunal pour mineurs devant lequel l'audition aux fins de décision a lieu.	Ce texte reproduit l'article 704 du Code criminel.
(2) Un tribunal pour mineurs peut, à l'audition d'une dénonciation, modifier la dénonciation ou un détail fourni sous le régime de l'article 35, de façon à rendre la dénonciation ou le détail conforme à la preuve, s'il semble y avoir une divergence entre la preuve et (a) l'allégation contenue dans la dénonciation, ou (b) l'allégation contenue dans la dénonciation (i) telle qu'elle est modifiée, ou (ii) telle qu'elle aurait été si on l'avait modifiée en conformité d'un détail fourni selon l'article 35.	

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PROCÉDURE À L'AUDITION

TEXTE | NOTES EXPLICATIVES

IRRÉGULARITÉS ET OBJECTIONS

38. (3) Un tribunal pour mineurs peut, à toute étape de l'audition aux fins d'une décision, modifier, selon qu'il est nécessaire, la dénonciation, s'il apparaît

(a) que la dénonciation

(i) n'expose pas ou expose de façon défectueuse une chose qui est nécessaire pour constituer la contravention ou la transgression,

(ii) ne nie pas une exception qui devrait être niée, ou

(iii) est sous quelque rapport défectueuse quant à la substance, et que les matières devant être alléguées dans la modification projetée sont révélées par la preuve recueillie lors de l'audition, ou

(b) que la dénonciation est sous quelque rapport défectueuse quant à la forme.

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PROCÉDURE À L'AUDITION

TEXTE	NOTES EXPLICATIVES

IRRÉGULARITÉS ET OBJECTIONS

38. (4) Une divergence entre la dénonciation et la preuve recueillie lors de l'audition n'est pas essentielle lorsqu'elle concerne

(a) le moment où l'on prétend que la contravention ou la transgression est commise, s'il est établi, lorsque cela est applicable, que la dénonciation a été déposée dans le délai prévu en matière de prescription; ou

(b) le lieu où l'on prétend que l'objet des procédures a pris naissance, s'il est établi qu'il a pris naissance dans la juridiction territoriale du tribunal pour mineurs qui tient l'audition.

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PROCÉDURE À L'AUDITION

TEXTE	NOTES EXPLICATIVES
IRRÉGULARITÉS ET OBJECTIONS	
38. (5) Le tribunal pour mineurs doit, en examinant la question de savoir si une modification devrait être apportée, (a) tenir compte de la preuve recueillie lors de l'audition, s'il en est, (b) examiner les circonstances de l'espèce, (c) chercher à déterminer si le défendeur a été induit en erreur ou a subi un préjudice dans sa défense du fait d'une divergence, d'une erreur ou d'une omission mentionnée au paragraphe (2) ou (3); et (d) se demander si, eu égard au fond de la cause, la modification projetée peut être apportée sans qu'il en résulte une injustice.	
38. (6) Lorsque, de l'avis du tribunal pour mineurs, le défendeur a été induit en erreur ou a subi un préjudice dans sa défense, par suite d'une erreur ou d'une omission dans la dénonciation, le tribunal pour mineurs peut ajourner l'audition.	Ce texte reproduit l'article 704 du Code criminel.

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PROCÉDURE À L'AUDITION

TEXTE	NOTES EXPLICATIVES
POUVOIRS DU TRIBUNAL POUR MINEURS À L'AUDITION	
39. Un juge du tribunal pour mineurs, agissant en vertu de la présente Partie, peut	Ce texte reproduit en partie l'article 451 du Code criminel.
(a) ajourner l'audition de temps à autre et changer le lieu de l'audition, lorsque la chose apparaît souhaitable en raison de l'absence d'un témoin, de l'impossibilité pour un témoin malade d'être présent à l'endroit où le juge siège ordinairement, ou pour tout autre motif suffisant, mais nul ajournement de ce genre ne doit être de plus de huit jours francs, à moins que le prétendu contrevenant ou transgresseur ne soit pas détenu;	
(b) décerner un mandat pour l'arrestation d'un prétendu contrevenant ou transgresseur	
(i) qui ne comparaît pas conformément à la signification d'une sommation à lui destinée, si la signification est prouvée, ou	
(ii) qui ne comparaît pas aux temps et lieu auxquels une audition a été ajournée;	

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PROCÉDURE À L'AUDITION

TEXTE	NOTES EXPLICATIVES
39. (Suite)	
(c) régler le cours de l'audition de la manière qui lui apparaît souhaitable pour la bonne administration de la justice et qui n'est pas incompatible avec la présente loi.	

PROCÉDURE À L'AUDITION

TEXTE	NOTES EXPLICATIVES
DÉPOSITION DES TÉMOINS	
40. (1) Lorsque le prétendu contrevenant ou transgresseur est devant un tribunal pour mineurs qui tient une audition aux fins d'une décision, le tribunal pour mineurs doit,	Ce texte est une adaptation de l'article 453 du Code criminel.
(a) entendre chaque témoin appelé de la part de la poursuite ou du défendeur et qui dépose sous serment sur toute question pertinente à l'audition;	
(b) permettre le contre-interrogatoire des témoins;	
(c) faire consigner la déposition de chaque témoin	
(i) par un sténographe que nomme le tribunal, ou dans une écriture lisible, sous forme de déposition, d'après la formule 10 ou	
(ii) dans une province ou l'utilisation d'un appareil d'enregistrement du son est autorisée par ou selon la loi provinciale dans les causes civiles, au moyen du type d'appareil ainsi autorisé et conformément aux prescriptions de la loi provinciale.	

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PROCÉDURE À L'AUDITION

TEXTE	NOTES EXPLICATIVES

DÉPOSITION DES TÉMOINS

40. (2) Lorsqu'une déposition est prise par écrit, le juge d'un tribunal pour mineurs doit, en présence du défendeur et avant de demander à ce dernier s'il désire appeler des témoins

(a) faire lire la déposition au témoin,

(b) faire signer la déposition au témoin, et

(c) signer lui-même la déposition.

40. (3) Lorsque les dépositions sont prises par écrit, le juge peut signer

(a) à la fin de chaque déposition, ou

(b) à la fin de plusieurs d'entre elles ou de l'ensemble des dépositions d'une manière indiquant que sa signature est destinée à authentiquer chaque déposition.

40. (4) Lorsque le sténographe désigné pour consigner les témoignages n'est pas un sténographe judiciaire dûment assermenté, il doit jurer qu'il rapportera sincèrement et fidèlement les témoignages.

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PROCÉDURE À L'AUDITION

TEXTE | NOTES EXPLICATIVES

DÉPOSITION DES TÉMOINS

40. (5) Lorsque les témoignages sont consignés par un sténographe nommé par le juge d'un tribunal pour mineurs, il n'est pas nécessaire qu'ils soient lus aux témoins ou signés par eux, et lorsque le juge, le poursuivant ou le défendeur le demandent, les témoignages doivent être transcrits par le sténographe et la transcription doit être accompagnée

(a) par un affidavit du sténographe déclarant qu'elle est un rapport fidèle des témoignages, ou

(b) d'un certificat déclarant qu'elle est un rapport fidèle des témoignages, si le sténographe est un sténographe judiciaire dûment assermenté.

40. (6) Lorsque, en conformité de la présente loi, on a recours à un appareil d'enregistrement du son relativement à des procédures aux termes de la présente loi, l'enregistrement ainsi fait doit être utilisé et transcrit, et la transcription doit être certifié et employée, conformément à la législation provinciale, mutatis mutandis, mentionnée au paragraphe (1),

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PROCÉDURE À L'AUDITION

TEXTE	NOTES EXPLICATIVES
REFUS DE DÉPOSER	
41. (1) Lorsqu'une personne, présente à une audition tenue conformément à la présente loi, et requise de rendre témoignage par le juge du tribunal pour mineurs (a) refuse de prêter serment, (b) après avoir prêté serment, refuse de répondre aux questions qui lui sont posées, (c) omet de produire les écrits qu'il lui est enjoint de produire, ou (d) refuse de signer sa déposition sans offrir une excuse valable de son omission ou refus, le juge peut, sauf lorsqu'il s'agit d'une audition statuant sur la détention, ajourner l'audition et peut, dans tous les cas, au moyen d'un mandat selon la formule 11 envoyer cette personne en prison pour une période d'au plus huit jours francs ou pour la période de l'ajournement de l'enquête, en prenant la plus courte de ces deux périodes.	Ce texte est une reproduction de l'article 457 du Code criminel.

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PROCÉDURE À L'AUDITION

TEXTE	NOTES EXPLICATIVES
REFUS DE DÉPOSER	
41. (2) Lorsqu'une personne visée par le paragraphe (1) est amenée devant le juge du tribunal pour mineurs à la reprise de l'audition ajournée et qu'elle refuse encore de faire ce qui est exigée d'elle, le juge peut de nouveau ajourner l'audition pour une période d'au plus huit jours francs et l'envoyer en prison pour la période d'ajournement ou toute partie de cette période, et il peut ajourner l'audition et envoyer la personne en prison, de temps à autre, jusqu'à ce qu'elle consente à faire ce qui est exigé d'elle.	
41. (3) Rien dans le présent article n'est censé empêcher le juge du tribunal pour mineurs de rendre une décision sur toute autre preuve suffisante par lui recueillie.	

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PROCÉDURE À L'AUDITION

TEXTE	NOTES EXPLICATIVES
DÉFAUT DE COMPARUTION D'UN TÉMOIN	
42. (1) Est coupable d'outrage au tribunal quiconque, étant requis par la loi d'être présent ou de demeurer présent pour rendre témoignage, omet, sans excuse légitime, d'être présent ou de demeurer présent en conséquence.	Ce texte est une reproduction de l'article 612 du Code criminel.
42. (2) Un juge d'un tribunal pour mineurs peut traiter par voie sommaire une personne coupable d'un outrage au tribunal en vertu du présent article, et cette personne est passible d'une amende de cent dollars ou d'un emprisonnement de quatre-vingt-dix jours, ou à la fois de l'amende et de l'emprisonnement, et il peut lui être ordonné de payer les frais résultant de la signification de tout acte judiciaire selon la présente Partie et de sa détention, s'il en est.	
42. (3) Une condamnation sous le régime du présent article peut être rédigée selon la formule 12 et un mandat de dépôt à l'égard d'une condamnation prévue par le présent article peut être dressé selon la formule 13.	

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PROCÉDURE À L'AUDITION

TEXTE	NOTES EXPLICATIVES
DÉFAUT DE COMPARUTION DU POURSUIVANT	
43. Lorsque le défendeur comparaît à une audition aux fins d'une décision et que le poursuivant, ayant été dûment avisé, ne comparaît pas, le tribunal peut rejeter la dénonciation ou ajourner l'audition à telle autre époque et selon les modalités qu'il estime opportunes.	Ce texte est une reproduction de l'article 706 du Code criminel. Le terme "défendeur" est défini de façon à inclure un enfant ou un adolescent à l'égard de qui une dénonciation a été reçue.

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PROCÉDURE À L'AUDITION

TEXTE	NOTES EXPLICATIVES
44. (1) Lorsque le poursuivant et le défendeur comparaissent, le tribunal doit procéder à la tenue d'une audition aux fins d'une décision.	Ce texte est une reproduction de l'article 707(1) du Code criminel.
44. (2) Le défendeur doit comparaître en personne et le tribunal peut, s'il le juge à propos, décerner un mandat selon la formule 4 pour l'arrestation du défendeur et ajourner l'audition en attendant sa comparution à la suite du mandat.	Ce texte est une reproduction de l'article 707(2) du Code criminel, modifié de façon à rendre la comparution du défendeur obligatoire.

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PROCÉDURE À L'AUDITION

TEXTE	NOTES EXPLICATIVES
45. (1) Lorsque le défendeur comparaît, le tribunal doit (a) lui expliquer l'essentiel de la dénonciation dans un langage simple, convenant à son âge et à sa compréhension et, (b) l'informer que, s'il le désire, il peut admettre les faits de la dénonciation.	Le paragraphe 261 renferme le commentaire suivant: "Nous recommandons que la loi soit plus explicite au sujet de la procédure de l'admission ou de la négation de la culpabilité et du privilège de non-incrimination". L'alinéa (a) est tiré de la règle 6 des Summary Jurisdiction (Children and Young Persons) Rules, 1933, reproduite à la page 366 de la 7e édition Clarke Hall and Morrison on Children. Les Rules of Court du Royaume-Uni ont été cités avec l'approbation du Comité.
45. (2) Aucun défendeur ne doit être déclaré contrevenant ou transgresseur sur un aveu intervenu en conformité du présent article, à moins qu'un tel aveu ne soit corroboré, à la satisfaction du tribunal, par une preuve indépendante et recevable.	Citation tirée du paragraphe 261: "L'admission du mineur ne devrait pas légalement servir de base aux procédures ultérieures, mais seulement de guide quant à la meilleure orientation à donner au cours futur du procès. Il ne faudrait pas considérer comme inutile que l'audition se poursuive afin d'entendre une nouvelle preuve simplement parce que l'inculpé a admis sa culpabilité." (Texte extrait des remarques du professeur Mannheim, d'Angleterre, cité par le Comité). ....

PROCÉDURE À L'AUDITION

TEXTE	NOTES EXPLICATIVES
45. (3) Lorsque le défendeur ne fait pas d'aveu en conformité du présent article, le tribunal doit poursuivre l'audition aux fins d'une décision et doit recueillir les témoignages des témoins du poursuivant et du défendeur en accord avec les dispositions de la Partie du Code criminel qui traite des enquêtes préliminaires.	Le présent article, qui renferme un renvoi général à des dispositions spécifiques du Code criminel, peut remplacer des dispositions particulières insérées ailleurs dans cet avant-projet.

PROCÉDURE À L'AUDITION

TEXTE	NOTES EXPLICATIVES
46. Aucune preuve autre que celle qui est pertinente à la question de savoir si le défendeur a commis ou non la contravention ou la transgression imputée n'est recevable lors d'une audition aux fins d'une décision, sauf en conformité des dispositions de l'article 53.	Le genre de preuve qui est admissible lorsqu'il s'agit de prendre une disposition ne devrait pas être soumis au juge au cours de l'audition en vue d'une décision puisque il s'agit dans une large mesure de preuve par oui-dire. Voir la page 87 du Rapport soumis au président des Etats-Unis et intitulé "Challenge of Crime in a Free Society", ainsi que les commentaires qui suivent l'article 21 du premier Avant-projet de la Loi visant l'uniformité des tribunaux pour mineurs.

PROCÉDURE À L'AUDITION

TEXTE	NOTES EXPLICATIVES
47. (1) La poursuite doit être conduite par un avocat nommé par le procureur général, lorsque ce dernier a nommé un tel avocat.	
47. (2) Le défendeur a le droit de faire une réponse et défense complète.	
47. (3) Sous réserve de l'article 78, chaque témoin à une audition concernant des procédures auxquelles s'applique la présente loi doit être interrogé sous serment.	

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PROCÉDURE À L'AUDITION

TEXTE	NOTES EXPLICATIVES
48. (1) Le tribunal doit, sauf dans le cas où l'enfant ou l'adolescent est représenté par un avocat, permettre à son père ou sa mère ou à son tuteur de l'aider dans sa défense, y compris le contre-interrogatoire des témoins de la poursuite.	Ce texte est une adaptation du paragraphe (1) de l'article 5 des Summary Jurisdiction (Children and Young Persons) Rules, du Royaume-Uni, de 1933, reproduit à la page 366 de la 7e édition de Clarke Hall and Morrison on Children.
48. (2) Lorsque ni le père ni la mère ni le tuteur ne peuvent être trouvés, ou que, de l'avis du tribunal, on ne peut raisonnablement exiger qu'ils soient présents, le tribunal peut permettre à un autre membre de la famille ou à toute autre personne responsable de remplacer le père, la mère ou le tuteur aux fins du présent article.	Ce texte est une adaptation du paragraphe (2) de l'article 5 des Règles applicables au Royaume-Uni, dont il est fait mention précédemment.

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PROCÉDURE À L'AUDITION

TEXTE	NOTES EXPLICATIVES
49. Quand l'enfant ou l'adolescent n'est pas représenté par un conseil ou aidé dans sa défense comme le prévoit le paragraphe (1) de l'article 48, si au lieu de poser des questions sous forme de contre-interrogatoire il procède par affirmations, le tribunal doit alors poser au témoin, pour l'enfant ou l'adolescent, les questions qu'il croit nécessaires et il peut à cette fin interroger l'enfant ou l'adolescent en vue d'élucider toute question que soulèvent ces affirmations.	Adaptation du paragraphe (2) de l'article 9 des Règles applicables au Royaume-Uni, reproduit à la page 367 de Clarke Hall and Morrison on Children. Au paragraphe 262, le Comité s'est reporté à cet article 9 des Règles anglaises et a recommandé "que des mesures appropriées soient prises" (...) "pour fournir aux juges des tribunaux pour mineurs des normes plus adéquates sur les questions de procédures". Cette recommandation vise surtout, semble-t-il, le droit de confrontation et de contre-interrogatoire.

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PROCÉDURE À L'AUDITION

TEXTE	NOTES EXPLICATIVES

AJOURNEMENT

50. Le tribunal peut, à sa discrétion, avant ou pendant une audition, sauf s'il s'agit d'une audition statuant sur la détention, ajourner l'audition aux temps et lieu qu'il doit désigner et indiquer en présence des parties ou de leurs avocats ou représentants respectifs, mais nul ajournement de ce genre ne doit, sauf du consentement des deux parties, être de plus de huit jours.

AUDITION

TEXTE	NOTES EXPLICATIVES
ABSENCE DE PUBLICITÉ	
51. (1) Les auditions des enfants et des adolescents ont lieu sans publicité, séparément et à part des procès des adultes.	Ce texte est une adaptation de l'article 12(1) de la loi actuelle. Il se peut qu'il soit superflu, et les mots "séparément et à part de ceux des adultes" ne serait pas approprié si la portée de la loi s'étend aux adultes dans certaines circonstances.

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AUDITION

TEXTE	NOTES EXPLICATIVES
EXCLUSION DU PUBLIC 51. (2) Le public sera exclu des auditions tenues en vertu de la présente loi et seules les personnes qui, de l'avis du juge, ont un intérêt direct en l'espèce ou s'intéressent directement aux travaux du tribunal y seront admises.	La recommandation 48 porte que: "Le public ne devrait pas être autorisé à assister aux audiences de la cour mais le juge devrait avoir le pouvoir de permettre à une personne quelconque d'y assister, après s'être assuré que cette personne a des raisons sérieuses d'être présente." Au paragraphe 245, le Comité a recommandé que les personnes suivantes soient présentes: "les membres du tribunal et du personnel nécessaire; les parties en cause, leur avocat et autres personnes ayant un intérêt direct avec le procès." Ces personnes devraient être comprises dans l'expression "ayant un intérêt direct dans la cause ou dans le travail du tribunal." L'article 24(1) actuel de la Loi sur les jeunes délinquants exclut de la salle du tribunal les enfants autres que ceux qui sont témoins. On prétend que cette disposition est englobée dans le nouveau texte du paragraphe (2) de l'article 51, qui décrète que

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AUDITION

TEXTE	NOTES EXPLICATIVES
51. (2) (Suite)	les seules personnes pouvant être admises sont celles qui, de l'avis du juge, ont un intérêt direct dans la cause ou dans le travail du tribunal." Cette disposition est conforme à la législation courante des Etats-Unis; ainsi, à l'article 19 de la Standard Juvenile Court Act, on relève le passage suivant: "Le grand public doit être exclu, et ne peuvent être admises que les personnes que le juge estime avoir un intérêt direct dans la cause ou dans le travail du tribunal." L'article 676 de la California Act exclut le public, tout en ajoutant que le juge peut néanmoins admettre "les personnes qu'il estime avoir un intérêt direct et légitime dans la cause particulière ou dans le travail du tribunal." L'article 260.155 du Minnesota Code est dans le même sens. Voir également l'article 18 du premier avant-projet du Uniform Juvenile Court Act ainsi que l'article 1-20(6) de la Juvenile Court Act de l'Etat de l'Illinois. ....

AUDITION

TEXTE	NOTES EXPLICATIVES
EXCLUSION DU DÉFENDEUR 51. (3) Le juge peut, à sa discrétion, ordonner qu'un défendeur soit absent de la salle d'audience lorsqu'on recueille une preuve dont la connaissance pourrait avoir sur lui un effet pernicieux.	Il y a lieu d'étudier la question de savoir si l'enfant ou le père ou la mère devrait être exclu d'une audition en vue d'une disposition, à la simple discrétion du juge. Le texte en regard a été rédigé en vue d'une semblable étude. L'article 260.155 du Minnesota Code porte ce qui suit: "Dans une procédure relative à une cause de délinquance, après qu'il a été déclaré que l'enfant est un délinquant, le tribunal peut dispenser l'enfant d'assister à l'audience s'il est mieux pour l'enfant qu'il en soit ainsi. Dans toute procédure, le tribunal peut dispenser temporairement le père ou la mère ou le tuteur d'un mineur d'assister à l'audience s'il est mieux qu'il en soit ainsi dans l'intérêt du mineur." En excluant ainsi l'enfant de l'audience, on ne cherche pas tellement à l'empêcher d'entendre des faits qui portent sur l'issue de la cause mais à le mettre à l'abri de révélations susceptibles de lui faire tort. ....

AUDITION

TEXTE	NOTES EXPLICATIVES
PRÉSENCE DE REPRÉSENTANTS DES MOYENS D'INFORMATION	
51. (4) Un seul représentant des journaux ou des autres publications ou de la radio a le droit d'être présent à toute audition tenue par un juge du tribunal pour mineurs et, en outre, à la discrétion du juge, un ou deux autres représentants des journaux ou autres publications ou de la radio peuvent être présents, mais en aucun cas il ne devra y avoir plus de trois représentants des journaux ou autres publications ou de la radio présents à une audition tenue en vertu de la présente loi.	Selon la recommandation 47, "les représentants des organes d'information devraient avoir la permission d'assister de droit aux audiences de la cour". Le paragraphe 244 renferme le passage suivant: "Nous suggérons également que le nombre de représentants d'organes d'information soit limité à trois, par exemple." Et le Comité ajoute: "Ces représentants seraient choisis par les organes mêmes, la décision finale étant laissée au juge dans le cas d'un désaccord." A notre avis, il n'y a pas lieu d'indiquer dans la loi la méthode de choisir les représentants des organes d'information. A la Conférence d'avril 1967, tenue à Couchiching, sur la Délinquance juvénile, le groupe d'étude dont les recherches devaient porter plus particulièrement sur "le tribunal", a convenu qu'un représentant des organes d'information devrait de droit être présent, et que deux autres pourraient assister à la discrétion du juge, mais que la loi devrait établir à trois le ....

AUDITION

TEXTE	NOTES EXPLICATIVES
51. (4) (Suite)	nombre maximum de ces représentants. Ainsi, au cour d'un procès à sensation, la tâche de limiter le nombre de ces représentants n'incomberait pas uniquement au juge. Le terme "radio" est défini au paragraphe 30 de l'article 28 de la nouvelle loi d'interprétation comme signifiant "toute transmission, émission ou réception de signes, de signaux, d'écrits, d'images et de sons ou de renseignements de toute nature par le moyen des ondes hertziennes." Cette définition comprend, présume-t-on, la télévision.

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AUDITION

TEXTE	NOTES EXPLICATIVES
MOYENS D'INFORMATION - Compte rendu des témoignages.	
51. (5) Sauf lorsque le juge en fait expressément défense, des représentants des journaux, des autres publications ou de la radio peuvent être autorisés à rapporter les témoignages recueillis lors de quelque audition, mais en aucun cas, le nom d'un enfant ou adolescent ou d'un témoin devant le tribunal ou encore tout renseignement particulier permettant d'identifier l'enfant ou l'adolescent devant le tribunal ne doit être rapporté.	La recommandation 47 porte ce qui suit: "Les représentants des organes d'information... sauf dans les cas où le juge l'interdit expressément, devraient avoir la permission de rendre publics les faits mis en preuve, sous réserve toutefois de l'interdiction de révéler l'identité de l'enfant qui se trouve devant la cour ou qui est censé avoir commis une infraction." Selon le paragraphe (3) de l'article 12 actuel, il est interdit de publier les noms d'un enfant qui comparaît devant le tribunal pour répondre à une accusation de délit. La question de la publicité en cette matière a fait l'objet d'un article intitulé "Publicity and Juvenile Court Proceedings", de Gilbert Geis, publié dans la Rocky Mountain Law Review (vol. 30, nº 2, février 1958) et réimprimé par le Children's Bureau de Washington. A la page 26 de la réimpression M. Geis a signalé que la loi

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TEXTE

51. (5) (Suite)

NOTES EXPLICATIVES

devrait être rédigée de façon que les renseignements obtenus à l'occasion d'enquêtes en vue de reportages comme par exemple sur des renseignements obtenus de la police, ne devraient pas être publiés.

"A cet égard, a-t-il déclaré, la loi du New Hampshire est absolument explicite; voici ce qu'elle déclare:

"Il est illégal pour tout journal de publier le nom ou l'adresse, ou quelque autre renseignement particulier servant à identifier un jeune délinquant qui a fait l'objet d'une arrestation, sans la permission expresse du tribunal, et il est illégal pour tout journal de publier un compte rendu des délibérations d'un tribunal pour mineurs".

Le groupe chargé d'étudier les aspects relatifs au tribunal, à la Conférence de Couchiching, a recommandé que les témoins, à la fois adultes et enfants, puissent aussi conserver l'anonymat afin de protéger davantage l'enfant qui comparaît devant le tribunal contre les abus de la publicité.

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AUDITION

TEXTE	NOTES EXPLICATIVES
PUBLICATION DE RENSEIGNEMENTS OBTENUS DE QUELQUE FACON QUE CE SOIT	
51. (6) Il est illégal de publier ou de radiodiffuser le nom d'un enfant, adolescent ou témoin comparaissant devant le tribunal pour mineurs, ou le nom d'un enfant ou adolescent appréhendé par la police, ou tout renseignement particulier servant à identifier un enfant ou un adolescent traduit devant le tribunal ou appréhendé par la police.	Le paragraphe (4) mentionne de façon particulière les journalistes et les renseignements obtenus au cours d'une audience d'un tribunal pour mineurs. Le présent paragraphe a pour objet d'englober le large éventail des renseignements obtenus à l'occasion d'enquêtes en vue de reportages que mentionnait M. Geis. Si des procédures contre des adultes doivent être comprises dans la présente loi, on devra étudier la question de savoir si ceux-ci doivent être protégés contre la publicité. Le paragraphe (3) de l'article 28 de la nouvelle loi d'interprétation définit le terme "radiodiffusion", qui signifie "la dissémination de toute forme de communication radioélectrique, y compris la radiotélégraphie, la radiotéléphonie, la transmission, sans fil, d'écrits, de signes, de signaux, d'images et de sons de toute nature au moyen des ondes hertziennes, destinée à être captée par le public, directement ou par l'intermédiaire de

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TEXTE	NOTES EXPLICATIVES
51. (6) (Suite)	stations-relais." Le paragraphe (8) de l'article 26 de cette même loi déclare ce qui suit: "Lorsqu'un mot est défini, les autres parties du discours et les formes grammaticales du même mot ont des sens correspondants."

AUDITION

TEXTE	NOTES EXPLICATIVES
51. (7) Il est illégal de publier ou de radiodiffuser le nom d'un enfant ou d'un adolescent, ou tout renseignement particulier servant à identifier un enfant ou un adolescent dans une procédure criminelle impliquant un enfant ou un adolescent, lorsque la procédure naît d'une infraction à la morale ou à la décence ou d'une conduite contraire à celles-ci.	Le paragraphe 241 du Rapport renferme la déclaration suivante du Comité: "Nous pensons que l'interdiction de dévoiler l'identité d'un enfant doit s'étendre à toute procédure criminelle impliquant un enfant dans des affaires d'outrages aux moeurs ou d'attentats à la pudeur, de conduite contraire à la décence ou à la morale, et ce, que le procès ait lieu devant un tribunal pour mineurs ou devant un tribunal pour adultes."
51. (8) Les paragraphes (6) et (7) s'appliquent à tous les journaux et autres publications publiés en quelque lieu que ce soit au Canada ainsi qu'à toutes les émissions de radio provenance de tout endroit au Canada.	Ce paragraphe est un élargissement de l'article 12(4) de la présente loi, qui ne visait que les journaux.
51. (9) Quiconque enfreint les dispositions du présent article est coupable d'une infraction punissable sur déclaration sommaire de culpabilité.	En traitant de l'interdiction de dévoiler l'identité des enfants de des jeunes personnes, le Comité a déclaré: "Cette interdiction devrait être renforcée par une pénalité suffisante incluse dans la loi." (Paragraphe 244).

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DÉSSAISISSEMENT

TEXTE	NOTES EXPLICATIVES
DÉSSAISISSEMENT	
52. Lorsqu'un adolescent a été cité devant le tribunal pour mineurs par suite d'une dénonciation alléguant une contravention, cet adolescent ou le procureur général peuvent, à tout moment avant qu'un plaidoyer ne soit enregistré, demander qu'il soit jugé par le tribunal ordinaire qui aurait, si ce n'était des dispositions de la présente loi, compétence en vertu de la loi applicable en l'espèce, et, lorsque l'adolescent ou le procureur général en font ainsi la demande, le tribunal pour mineurs n'a pas compétence pour juger l'adolescent; cependant, en cas de déclaration de culpabilité, le tribunal ordinaire doit renvoyer l'adolescent devant le tribunal pour mineurs aux fins de dispositions en conformité de l'article 57 de la présente loi.	Voir la recommandation 16. Le Comité a accepté le principe sur lequel se fonde présentement l'article (9), à savoir que seul le tribunal pour mineurs devait être compétent pour décider des questions de déssaisissement (paragraphe 168). Cependant, le Comité a reconnu que le procureur général pouvait, dans des cas particuliers, lorsque l'intérêt de la collectivité exige qu'une affaire soit publiquement instruite devant les tribunaux ordinaires, exiger que le procès ait lieu devant de tels tribunaux. Le Comité a envisagé une procédure selon laquelle le procureur général pourrait exiger qu'on suive une semblable procédure, soit directement soit après que le juge du tribunal pour mineurs a refusé de renvoyer l'affaire devant une autre juridiction. (Paragraphe 168). Par contre, le Comité a estimé que l'adolescent devait avoir le droit d'insister pour que son cas soit entendu devant un tribunal ordinaire. (Paragraphe 171).

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DÉSSAISISSEMENT

TEXTE	NOTES EXPLICATIVE
52. (Suite)	Le droit du procureur général ou de l'adolescent d'exiger que son procès se déroule devant le tribunal ordinaire ne priverait le tribunal pour mineurs de sa compétence propre qu'en matière de décision; le tribunal ordinaire serait tenu de renvoyer l'adolescent, en cas de déclaration de culpabilité, devant le tribunal pour mineurs pour qu'il soit statué sur son sort. Le paragraphe 169 du Rapport soulève une difficulté quant à la procédure que la recommandation 17 ne parvient pas à élucider, lorsque il mentionne le droit du procureur général d'exiger ce déssaisissement "directement" ou après un refus. En effet, le pouvoir du procureur général d'exiger directement un procès ordinaire se concilie difficilement en termes pratiques, avec la discrétion accordée au tribunal en matière de déssaisissement. Par suite de l'insertion dans l'article proposé du mot "directement", il est difficile d'établir si la discrétion du juge l'emporte sur le pouvoir du procureur général. Le juge

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DÉSSAISISSEMENT

TEXTE	NOTES EXPLICATIVES
52. (Suite)	d'un tribunal pour mineurs dispose d'un pouvoir discrétionnaire l'autorisant d'abord à décider s'il soit ordonner une audition pour considérer la question du déssaisissement et, en second lieu, à se déssaisir à la suite de l'audition. La mention du pouvoir direct du procureur général d'exiger un procès ordinaire pourrait s'interpréter comme ayant l'effet, dans les cas où ce pouvoir est exercé de priver le juge de son pouvoir discrétionnaire. Selon la recommandation, le droit du procureur général ou de l'adolescent ne se poserait que lorsque aucune ordonnance de déssaisissement n'a été rendue par le juge. On peut envisager le cas où le juge décide de procéder à une audition en vue d'une décision sans considérer la possibilité d'un déssaisissement. L'exercice, à ce moment là, de la part du procureur général ou de l'adolescent, du droit d'exiger, un procès ordinaire constituerait une invitation pour le juge d'exercer son pouvoir discrétionnaire en

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DÉSSAISISSEMENT

TEXTE	NOTES EXPLICATIVES
52. (Suite)	matière de déssaisissement, c'est-à-dire, de déssaisissement en ce qui concerne le procès et la sentence. Si le juge décide de ne pas se déssaisir, l'application de l'article proposé aurait automatiquement l'effet d'un transfert de juridiction en ce qui concerne le procès seulement. Le présent article ne reflète pas entièrement la recommandation du Comité. Plutôt que prévoir l'excercice du droit du procureur général ou du défendeur à quelque moment que ce soit après que le juge a décidé de ne pas se déssaisir, il prévoit l'exercice de ce droit lors de la comparution, avant qu'un plaidoyer soit enregistré. Cette disposition semble plus réaliste et plus pratique du point de vue de la procédure. En effet puisque l'exercice par le procureur général ou par le défendeur de leur droit d'exiger un procès ordinaire peut contrecarrer le pouvoir discrétionnaire du juge, il est préférable de décréter que l'exercice de ce droit intervienne avant que le juge se prononce au sujet du déssaisissement. ....

DÉSSAISISSEMENT

TEXTE	NOTES EXPLICATIVES
53. (1) À n'importe quel stade d'une audition aux fins d'une décision concernant un adolescent accusé d'avoir commis une contravention, mais avant que la défense n'ait débuté, le tribunal peut ordonner que l'adolescent soit traduit devant le tribunal ordinaire qui aurait, si ce n'était des dispositions de la présente loi, compétence en vertu de la loi applicable en l'espèce (a) pour y être jugé et recevoir sa sentence, ou (b) pour y être jugé seulement; dans un tel cas, le tribunal ordinaire doit, si l'adolescent est trouvé coupable, le renvoyer devant le tribunal pour mineurs aux fins de disposition en conformité de l'article 57 de la présente loi.	L'objet du présent article est de donner suite à la recommandation 16, qui indique que le Comité a approuvé le principe sur lequel se fonde le paragraphe (1) du présent article 9 de la Loi sur les jeunes délinquants. Le Comité a approuvé les exigences en matière d'âge que fixe le présent article 9, savoir que l'accusé doit avoir 14 ans ou plus (voir la recommandation 18 ainsi que le paragraphe 173), mais a recommandé qu'on fasse disparaître cette exigence selon laquelle le déssaisissement n'est possible que si l'infraction imputée est punissable par voie de mise en accusation. L'article proposé autorise le déssaisissement seulement dans les cas où un adolescent est présumé avoir commis une contravention. Le Comité a de plus recommandé, à titre de procédure supplémentaire à ce que prévoit le présent article 9, le renvoi d'un cas devant le tribunal ordinaire aux seules fins de l'instruction; l'affaire serait alors déférée au tribunal pour mineurs pour qu'il soit statué sur le sort du mineur.

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DÉSSAISISSEMENT

TEXTE	NOTES EXPLICATIVES
53. (1) (Suite)	(Voir la recommandation 17 ainsi que le paragraphe 168) Le présent article propose deux mécanismes de déssaisissement: l'adolescent peut être renvoyé devant le tribunal ordinaire aux fins du procès et de la sentence (article 9 actuel), ou pour le procès seulement; dans ce dernier cas, le tribunal ordinaire doit renvoyer l'adolescent devant le tribunal pour mineurs pour qu'il soit statué sur son sort. (Voir les Kansas Statutes Annotated, Supplément de 1965, ainsi que l'article 38-808(a) du Juvenile Code auxquels il a été fait mention). Il découle de la recommandation 20(b), que l'ordonnance de renvoi devrait être couchée par écrit. Il convient de noter que le déssaisissement pourrait comporter un renvoi à un tribunal provincial statuant sur déclaration sommaire de culpabilité si l'Annexe renvoie à une loi provinciale en ce qui concerne la définition d'une contravention.

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DÉSSAISISSEMENT

TEXTE	NOTES EXPLICATIVES
53. (2) Le tribunal doit, en délibérant sur l'opportunité de rendre une ordonnance selon les dispositions du présent article, considérer le bien de l'adolescent et l'intérêt de la collectivité.	Le présent article s'inspire du principe formulé au paragraphe (1) de l'article 9 actuel. Cette norme qu'établit la loi a été également recommandée par le Comité. (Voir la recommandation 16 ainsi que le paragraphe 168).
53. (3) Si, lorsqu'il a été présenté lors de l'audition devant un juge du tribunal pour mineurs une preuve raisonnablement convaincante qu'un adolescent a commis une contravention, et qu'un avis de ladite audition a été signifié au père ou à la mère de l'adolescent ou à son tuteur, le tribunal juge à propos, en vertu du paragraphe (2), d'étudier l'opportunité de rendre une ordonnance aux termes du présent article, il doit	Le Comité a recommandé que des contrôles particuliers soient prévus à l'égard de l'exercice du pouvoir discrétionnaire du juge du tribunal pour mineurs en ce qui concerne le déssaisissement. Le présent paragraphe tente de donner suite à ces recommandations. Voir le paragraphe 174 relativement à une audition en matière de déssaisissement. Voir également la recommandation 20(c) et le paragraphe 175 en ce qui concerne l'obligation d'adresser aux parents un avis de cette dernière audition. Cette disposition se conforme aux recommandations 20(c) et 19. Le paragraphe 173 du Rapport expose la situation décrite à l'alinéa (a).

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DÉSSAISISSEMENT

TEXTE	NOTES EXPLICATIVES
53. (3) (Suite)	
(a) faire faire sous sa surveillance une enquête approfondie sur les antécédents de l'adolescent et sur les circonstances de la contravention et, à la suite de cette enquête, il peut ordonner l'examen médical, psychologique et psychiatrique ou l'enquête sociale qu'il croit nécessaire ou souhaitable;	Le Comité a étudié à fonds les antécédents susceptibles de justifier un déssaisissement (recommandation 20(a)), mais, selon la recommandation 19, le juge ne peut ordonner une telle enquête que s'il existe une preuve raisonnablement concluante que l'adolescent a commis une contravention. Le présent alinéa vise à englober la proposition faite au paragraphe 174 ainsi que la recommandation 20(a).
(b) conclure spécifiquement qu'il n'y a pas lieu de confier l'adolescent à une institution pour débiles mentaux ou pour malades mentaux;	Voir la recommandation 16. La conclusion exigée par le présent alinéa, comme dans le cas de l'alinéa (a), vise les deux genres de déssaisissement: celui qui a trait au procès seulement et celui qui a trait au procès et à la sentence. (Voir également le paragraphe 168 du Rapport.)

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DÉSSAISISSEMENT

TEXTE	NOTES EXPLICATIVES
53. (3) (Suite)	
(c) dans le cas d'une ordonnance rendue aux termes de l'alinéa (a) du paragraphe (1), conclure spécifiquement	L'obligation de constater de façon spécifique que l'adolescent n'est pas apte à subir un traitement dans l'une ou l'autre des institutions ouvertes aux adolescents contrevenants, ou que le
(i) que l'adolescent n'est apte à être traité dans aucune institution ou au sein d'aucun service destinés aux soins et au traitement des adolescents, ou	contrevenant devrait être détenu pendant une période plus longue, ne s'applique évidemment qu'à un déssaisissement en matière de procès et de sentence, et non en matière de procès seulement, même si la recommandation 16
(ii) que la sécurité de la collectivité exige que l'adolescent reste détenu pendant une période plus longue que celle que le tribunal aurait le pouvoir de fixer, dans le cas d'une décision statuant qu'il est un adolescent contrevenant.	n'établit aucune distinction entre ces deux conditions préalables et celle que renferme l'alinéa (b) ci-dessus.

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DÉSSAISISSEMENT

TEXTE	NOTES EXPLICATIVES
53. (4) Aucune ordonnance rendue en conformité du présent article n'est valide à moins qu'elle ne soit par écrit, et que les motifs à l'appui ne soient exposés par écrit dans le dossier.	Pour faire suite à la recommandation 20(b), ce paragraphe établit un nouveau contrôle au sujet de l'exercice du pouvoir discrétionnaire du juge en matière de déssaisissement. (Voir également le paragraphe 175). La recommandation 20(b) propose en outre que ces motifs érits devraient être adressés au tribunal ordinaire. Aucune suite n'a été donnée à cette recommandation. La raison est apparente: le juge du tribunal ordinaire serait en possession de renseignements concernant les antécédents de l'accusé, renseignements étrangers à la preuve établissant que l'infraction a été commise.
53. (5) Une ordonnance rendue en conformité du présent article peut être rédigée d'après la formule 15 ou la formule 16, selon le cas.	

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DÉSSAISISSEMENT

TEXTE	NOTES EXPLICATIVES
54. (1) Le juge qui rend une ordonnance conformément à l'article 53 n'a pas compétence pour juger l'adolescent en sa qualité de juge, juge de paix ou magistrat en vertu d'une autre loi.	
54. (2) Lorsqu'un juge, agissant aux termes de l'article 53, estime opportun que les procédures se poursuivent sous le régime de la présente loi, et que l'adolescent n'admet pas les faits exposés dans la dénonciation, ce juge n'a pas compétence pour continuer les procédures sous le régime de la présente loi, et un autre juge doit procéder à la tenue d'une nouvelle audition aux fins d'une décision.	"Si le juge décide de ne pas se désaissir et que le jeune inculpé conteste l'accusation, le fait qu'il y a eu enquête concernant les antécédents de l'inculpé obligerait le juge à renoncer à son pouvoir juridictionnel en faveur d'un autre tribunal pour mineurs..." (Paragraphe 174).

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DÉSSAISISSEMENT

TEXTE

55. Lorsqu'une demande est faite ou une ordonnance rendue aux termes de l'article 52 ou de l'article 53 respectivement, des procédures criminelles peuvent être engagées devant les tribunaux ordinaires conformément à toute autre loi applicable, et, aux fins de ces procédures,

(a) les procédures faites en vertu de la présente loi sont censées n'avoir jamais été engagées, et

(b) le temps qui s'est écoulé au cours des procédures faites en vertu de la présente loi est censé n'avoir jamais couru aux fins d'un délai quelconque de prescription fixé par la loi relativement à la faute imputée.

NOTES EXPLICATIVES

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DÉCISION

TEXTE	NOTES EXPLICATIVES
56. (1) Quand le tribunal a entendu le poursuivant, le défendeur et les témoins, il doit, après avoir examiné la question, décider que la dénonciation a été prouvée, ou la rejeter, selon le cas.	Recommandation 64. L'audition aux fins d'une décision a pour objet de déterminer si le défendeur a commis les actes allégués dans la dénonciation. Aucune enquête sur les antécédents ne devrait être faite avant l'établissement de la décision. Le Comité a estimé qu'une décision sur les faits n'entraînerait pas automatiquement une décision portant que le défendeur est un contrevenant ou un transgresseur. Elle devrait plutôt constituer la base d'une enquête faite par le tribunal sur les circonstances de la cause et sur les antécédents du contrevenant et, par la suite, d'une nouvelle ordonnance du tribunal.

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DÉCISION

TEXTE	NOTES EXPLICATIVES
56. (2) Une décision rendue en conformité du paragraphe (1) et déclarant que la dénonciation a été prouvée n'est pas censée être une décision déclarant qu'un défendeur est un contrevenant ou un transgresseur, selon le cas.	Cet article ne vise qu'à donner suite à la recommandation 64. Au fait, il y a peu de différence entre un procès prévu par le Code criminel et une audition aux fins d'une décision sous le régime de la loi proposée, si ce n'est que la décision rendue dans le premier cas est, soit une ordonnance portant déclaration de culpabilité, soit un rejet, tandis que dans le dernier cas, l'audition aux fins d'une décision aboutit à une simple conclusion sur la question de savoir si les faits allégués ont été prouvés ou non. Une conclusion positive à cet égard ne constitue pas une déclaration de culpabilité et elle n'a aucun effet juridique autre que celui de permettre au tribunal de tenir une audition pour disposition, ayant pour objet de déterminer de quelle façon le défendeur devra être traité. L'article proposé ne comporte aucune précision sur la nature de la preuve qui doit être produite par la poursuite afin d'obtenir une décision positive.

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DÉCISION

TEXTE	NOTES EXPLICATIVES
56. (2) (Suite)	L'article 7 du Code criminel, qui maintient en vigueur les règles et les principes de la Common Law, rend applicable au présent article la théorie du doute raisonnable.

DISPOSITION - DÉCISION DÉFINITIVE

TEXTE	NOTES EXPLICATIVES
AUDITION POUR DISPOSITION 57. Lorsque le juge a décidé que la dénonciation a été prouvée, il doit procéder à l'audition de la preuve au sujet de la décision définitive à rendre dans la cause, et il doit admettre en preuve le rapport sur les antécédents sociaux du défendeur, établi en conformité de l'article 66 de la présente loi, et toute autre preuve utile et pertinente qui peut être soumise, après quoi le juge peut, selon qu'il l'estime opportun,	
Acquittement (a) Acquitter l'enfant ou l'adolescent, lorsqu'il est d'avis que la comparution de l'enfant ou de l'adolescent devant le tribunal est suffisante pour qu'il ne commette pas d'autres contraventions ou transgressions;	Une recommandation particulière a été faite au sujet de cette disposition (Voir la recommandation 66). Le Comité a été d'avis, que, lorsque le seul fait de la comparution devant un tribunal suffit à fournir la certitude qu'un enfant ou un adolescent ne se comportera plus de façon antisociale, le juge devrait avoir le pouvoir d'acquitter cet enfant sans qu'il lui soit nécessaire de se prononcer sur la question du délit. (Paragraphe 290).

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DISPOSITION - DÉCISION DEFINITIVE

TEXTE	NOTES EXPLICATIVES
57. (Suite) Disposition provisoire (b) ajourner la cause pour une période n'excédant par deux mois, à condition que l'enfant ou l'adolescent et son père ou sa mère, ou son tuteur conviennent de suivre une ligne de conduite déterminée que dicte le juge, laquelle peut comprendre les mesures énoncées dans l'un ou plusieurs des paragraphes suivants: paragraphe (b) de l'article 58, paragraphe (b) de l'article 59, paragraphe (c) de l'article 60, selon le cas, paragraphe (1) de l'article 67, ou paragraphe (b) de l'article 60, ou toute autre activité ou engagement que le juge estime servir au mieux les intérêts de l'enfant ou de l'adolescent, et ordonner que l'enfant ou l'adolescent comparaisse devant lui pour qu'une décision définitive soit prise à son égard en conformité du présent article;	Une recommandation particulière a été faite au sujet de cette disposition (Voir la recommandation 65). Ce paragraphe devrait permettre aux tribunaux de réaliser, avec la sanction légale voulue, l'objet pour lequel la procédure d'ajournement sine die est présentement employée. Le Comité a estimé que, dans les circonstances, l'enfant et ses père et mère devraient accepter une certaine surveillance, même si une décision définitive n'a pas encore été rendue. L'ensemble de cette disposition vise en dernière analyse à permettre au juge d'ordonner que l'enfant soit acheminé vers un centre d'accueil ou prenne avantage de quelque autre service qu'offre la société.

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DISPOSITION - DÉCISION DÉFINITIVE

TEXTE	NOTES EXPLICATIVES
57. (Suite) Recours à la loi provinciale (c) lorsqu'il est d'avis que la preuve offre des motifs raisonnables de croire que le défendeur devrait être traité comme un enfant ou un adolescent qui a besoin de surveillance, rendre une ordonnance rejetant la dénonciation et procéder plutôt en vertu de la loi provinciale applicable destinée à protéger ou avantager les enfants ou les adolescents, s'il est compétent en vertu de telle loi provinciale;	Le Rapport recommande cette procédure. (Voir la recommandation 64 ainsi que les paragraphes 286 et 287). Le paragraphe 286 du Rapport déclare que le tribunal devrait avoir le pouvoir de suspendre toute action et de procéder en vertu de la loi provinciale à quelque étape que ce soit des procédures; toutefois, dans la recommandation 64, le Comité a spécifiquement recommandé que cette autre façon de procéder soit comprise dans les dispositions de la loi portant sur les diverses mesures pouvant être adoptées. L'article 716 de la Family Court Act de l'Etat de New-York prévoit une semblable modification des procédures. Le présent article devrait prévoir ce qui semble être l'objet recherché par l'article 39 de la loi actuelle sur les jeunes délinquants dont voici le texte: "Rien dans la présente loi ne doit être interprété comme ayant l'effet d'abroger ou d'annuler quelque disposition

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DISPOSITION - DÉCISION DÉFINITIVE

TEXTE	NOTES EXPLICATIVES
57. (c) (Suite)	d'un statut provincial en vue de la protection ou du bien des enfants; et lorsqu'un jeune délinquant, qui ne s'est pas rendu coupable d'une infraction constituant un acte criminel aux termes des dispositions du Code criminel, tombe sous les dispositions d'un statut provincial, il peut être traité, soit en vertu de ce statut, soit en vertu de la présente loi, selon que le meilleur intérêt de cet enfant l'exige." Une disposition semblable à celle-ci donnerait au tribunal une latitude souhaitable. (Pour un exposé de ces changements de procédures, voir la note intitulée "Rights and Rehabilitation in the Juvenile Courts", qui paraît aux pages 281 à 341, et plus particulièrement aux pages 300 à 310, de la Columbia Law Review, numéro de février 1967, vol. 67, n° 2). La Loi sur les prisons et les maisons de correction renferme un renvoi à la loi provinciale.

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DISPOSITION - DÉCISION DÉFINITIVE

TEXTE	NOTES EXPLICATIVES
57. (c) (Suite)	L'article 70 de cette loi a fait l'objet de commentaires dans la note explicative qui apparaît en regard de la disposition qui traite de l'arrangement. En effet, cet article, qui se rapporte à l'Ontario, prévoit des arrangements à l'amiable dans certains cas comportant une infraction à la loi du Canada. Le tribunal peut confier l'enfant à quelque personne convenable en vertu des dispositions de la loi d'Ontario, placer l'enfant dans un foyer d'accueil ou l'acheminer vers une institution provinciale. L'article 71 porte que, lorsqu'une semblable ordonnance a été rendue, "l'enfant peut ensuite être traité, sur l'autorité des lois de la province d'Ontario de la même manière, à tous égards, que si cet ordre eût été légalement rendu en conformité d'une procédure intentée sous l'autorité d'un statut de la province d'Ontario."
Décision définitive 57. (d) rendre une décision déclarant que le défendeur est, selon le cas, un enfant contrevenant, un adolescent contrevenant, ou un transgresseur.	

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DISPOSITION

TEXTE	NOTES EXPLICATIVES
TRANSGRESSEUR	
58. Lorsqu'il a été décidé que l'enfant ou l'adolescent est un transgresseur, et après que le juge a procédé à l'audition de la preuve sur la façon de disposer convenablement du cas, le juge peut rendre une ordonnance de disposition, qui doit comprendre l'une ou plusieurs des mesures suivantes:	
(a) imposer une amende d'au plus vingt-cinq dollars, laquelle peut être acquittée par versements périodiques ou autrement;	Le Comité a recommandé que le montant maximum de l'amende soit portée à cent dollars, sauf dans le cas d'un enfant contrevenant de moins de quatorze ans. (Voir la recommandation 69 ainsi que le paragraphe 296). Le mode de paiement par versement a été approuvé par le Comité. Le montant maximum de l'amende applicable à un transgresseur n'a pas été clairement établi; toutefois, puisque le transgresseur ne commet qu'une faute bien légère nous ne voyons aucune raison de majorer le montant de l'amende à imposer.

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DISPOSITION

TEXTE	NOTES EXPLICATIVES
58. (Suite)	
(b) placer l'enfant ou l'adolescent sous la surveillance d'un agent de surveillance, ou de toute autre personne qualifiée, aux conditions déterminées par le juge, mais la période visée par cette ordonnance ne peut être de plus de deux ans;	Ce texte a été approuvé par le Comité qui, dans le paragraphe 305, a déclaré ce qui suit: "On nous a également proposé de remplacer l'article de la loi qui autorise le tribunal à "confier l'enfant aux soins ou à la garde d'un agent de surveillance ou de toute autre personne recommandable" par un article qui autorise le tribunal à placer l'enfant sous la surveillance d'un agent de surveillance ou de toute autre personne responsable. Comme il est expliqué dans un document qui nous a été présenté, l'article actuel n'est pas clair puisqu'il ne précise pas le sens du terme "garde" en ce qui a trait à la durée, à l'effet de cette ordonnance sur les droits des parents ou aux responsabilités (sur les plans financier et juridique) qui incombent à la personne à qui est confiée la garde de l'enfant." La recommandation 73 formule le voeu que "on devrait clarifier les conséquences juridiques qu'implique une liberté surveillée". Elle renvoie ensuite au

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DISPOSITION

TEXTE	NOTES EXPLICATIVES
58. (b) (Suite)	paragraphe 305 qui, comme on l'a dit ci-dessus, signale que la portée juridique du mot "garde" n'est pas claire, c'est pourquoi on a recommandé la terminologie qui a été utilisée dans l'alinéa (b) ci-contre, où le mot "surveillance" a remplacé le mot "garde". Le Comité a approuvé les termes utilisés. A notre avis, la recommandation 73 fait erreur lorsqu'elle résume l'essentiel du paragraphe 305, et, par conséquent, il n'est pas nécessaire de clarifier l'effet juridique de la surveillance. Le paragraphe 24 du Rapport de 1962 présenté par le sous-comité chargé d'étudier la délinquance juvénile, en 1962, pour le compte du Comité législatif de l'Association des agents de surveillance, de la province d'Ontario, déclare ce qui suit: "Une loi revisée devrait modifier le pouvoir dont dispose le tribunal de confier l'enfant aux soins ou à la garde d'un agent de surveillance ou à quelque autre personne convenable et devrait y substituer le pouvoir de placer l'enfant sous la surveillance d'un agent de surveillance ou ....

DISPOSITION

TEXTE	NOTES EXPLICATIVES
58. (b) (Suite)	de toute autre personne convenable." En ce qui concerne le délai de deux ans, le paragraphe 186 du Rapport déclare que: "Un enfant qu'il n'est pas nécessaire de confier à une institution devrait, à notre avis, être sous la juridiction des autorités pendant une période n'excédant pas deux années." On trouvera ailleurs dans la présente loi des dispositions relatives au transfert des ordonnances concernant la surveillance.

DISPOSITION

TEXTE	NOTES EXPLICATIVES
58. (Suite)	
(c) placer l'enfant ou l'adolescent dans un foyer d'accueil ou un foyer d'accueil collectif appropriés, ou autre milieu protecteur, pour une période d'au plus deux ans, du consentement du père ou de la mère ou des deux parents ou du tuteur, et, lorsque les père et mère se trouvent au foyer de l'enfant ou adolescent, du consentement de l'un et l'autre, mais seulement après avoir pris connaissance d'un rapport préalable à la disposition au sujet de cet enfant ou adolescent;	La recommandation 12 et le paragraphe 149 déclarent qu'un transgresseur ne devrait pas être éloigné de son foyer et placé dans un foyer d'accueil sans le consentement de ses parents. La période maximum de deux ans est conforme à la recommandation du Comité formulée au paragraphe 186 du Rapport. Selon la recommandation 61 et le paragraphe 279 du Rapport, un rapport préalable au prononcé de la sentence doit être présenté avant qu'un enfant puisse être éloigné de son foyer.

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DISPOSITION

TEXTE	NOTES EXPLICATIVES
58. (Suite) (d) imposer à l'enfant ou adolescent les conditions supplémentaires ou différentes qui peuvent paraître opportunes et favorables au bien de l'enfant ou adolescent;	Le Comité n'a fait aucune recommandation au sujet de la présente disposition, qui se trouve présentement à l'article 20(1)(g) de la Loi actuelle sur les jeunes délinquants. On peut faire valoir à l'encontre de cette disposition qu'elle donne à un juge l'autorité d'imposer toutes sortes de conditions, quel qu'en soit le caractère onéreux ou tyrannique; par contre, une certaine flexibilité s'impose dans un pays aussi vaste où abondent les régions isolées et où l'on trouve de nombreux groupes différents les uns des autres. Cette disposition mérite, et recevra à coup sûr, un examen critique.

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DISPOSITION

TEXTE	NOTES EXPLICATIVES
58. (Suite)	
(e) confier l'enfant ou l'adolescent à une société d'aide à l'enfance, dûment organisée en vertu d'une loi de la Législature de la province et approuvée par le lieutenant-gouverneur en conseil, ou, dans une municipalité où il n'existe pas de société d'aide à l'enfance, aux soins du surintendant, s'il en est un, pour une période de deux ans au plus, mais seulement après que le juge a pris connaissance d'un rapport préalable à la disposition au sujet de cet enfant ou adolescent.	Ce texte reproduit l'article 20(1)(h) actuel de la Loi sur les jeunes délinquants. Un rapport préalable au prononcé de la sentence doit être présenté avant qu'un enfant puisse être éloigné de son foyer. (Voir la recommandation 61 ainsi que le paragraphe 279). Le paragraphe 186 du Rapport traite du délai de deux ans. Le surintendant dont il est fait mention dans le présent article et les articles subséquents est le surintendant provincial du bien-être de l'enfance, ou un fonctionnaire du même ordre. L'article 20(1)(i) de la Loi sur les jeunes délinquants n'est pas pertinent, puisque le Comité a recommandé qu'un "transgresseur" ne devrait pas être envoyé à une école de formation. (Recommandation 12, paragraphe 313).

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DISPOSITION

TEXTE	NOTES EXPLICATIVES
ENFANT CONTREVENANT	
59. Lorsqu'il a été décidé qu'un enfant est un enfant contrevenant, et après que le juge a procédé à l'audition de la preuve sur la façon de disposer convenablement du cas, le juge peut rendre une ordonnance de disposition qui doit comprendre l'une ou plusieurs des mesures suivantes:	
(a) imposer une amende d'au plus vingt-cinq dollars, qui peut être acquittée par versements périodiques ou autrement;	Le Comité a recommandé que l'amende maximum applicable à un enfant contrevenant soit maintenue à vingt-cinq dollars. (Recommandation 69 et paragraphe 295). Le Comité a également recommandé que le paiement de l'amende puisse se faire par versement, lorsqu'une ordonnance de la cour l'autorise. (Recommandation 69, paragraphe 295).

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DISPOSITION

TEXTE	NOTES EXPLICATIVES
59. (Suite)	
(b) placer l'enfant sous la surveillance d'un agent de surveillance, ou de toute autre personne qualifiée, aux conditions déterminées par le juge, mais la période visée par cette ordonnance ne peut être de plus de deux ans;	Le Comité, dans le paragraphe 305, a approuvé le nouveau texte de cette disposition. Dans l'examen de cette question, on peut consulter les notes en regard de la même disposition relative au "transgresseur". Le paragraphe 186 du Rapport a recommandé un délai de deux ans à l'égard de cette façon de disposer d'un cas particulier. Ce délai est en outre conforme à la recommandation 25 du mémoire préparé par l'Association des agents de surveillance d'Ontario.
(c) faire placer l'enfant dans un foyer d'accueil ou un foyer d'accueil collectif appropriés, ou autre milieu protecteur, pour une période d'au plus deux ans, mais seulement après que le juge a pris connaissance d'un rapport préalable à la disposition au sujet de cet enfant;	Le Comité n'a fait aucune recommandation en ce qui concerne le consentement des parents. Un rapport préalable au prononcé de la sentence doit être présenté avant qu'un enfant puisse être éloigné de son foyer. (Voir la recommandation 61 ainsi que le paragraphe 279).

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TEXTE	DISPOSITION	NOTES EXPLICATIVES
59. (Suite)		
	(d) imposer à l'enfant les conditions supplémentaires ou différentes qui peuvent paraître opportunes et favorables au bien de l'enfant;	Voir les notes qui apparaissent en regard de la disposition relative au transgresseur.
	(e) confier l'enfant à une école de formation pour une période d'au plus trois ans, mais seulement après que le juge a pris connaissance d'un rapport préalable à la disposition au sujet de l'enfant, et seulement après que tout a été fait pour essayer de traiter l'enfant dans son propre foyer, ou dans un foyer d'accueil, un foyer d'accueil collectif, ou autre milieu protecteur.	L'expression école de formation a remplacée l'expression "école industrielle". (Voir la recommandation 75 ainsi que le paragraphe 312). Le délai de trois ans ici prévu s'inspire de la recommandation 23 du Comité, de même que du paragraphe 183 du Rapport. La recommandation 76 du Rapport porte ce qui suit: "Le placement d'un enfant dans une institution devait être considéré comme une mesure de dernier ressort et l'économie de la loi devrait établir très clairement qu'un tel concept est fondamental en matière de traitement d'un jeune délinquant." Le paragraphe 313 expose le même point de vue. On a cherché à donner à la présente disposition le même objet que celui que poursuit

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DISPOSITION

TEXTE

59. (e) (Suite)

NOTES EXPLICATIVES

l'article 25 de la Loi sur les jeunes délinquants, dont voici le texte:

"Il est interdit d'envoyer un jeune délinquant, apparemment âgé de moins de 12 ans, à une école industrielle, tant qu'une tentative n'a pas été faite d'effectuer la réforme de cet enfant à son propre foyer ou à un foyer d'adoption, ou pendant qu'il est sous la garde d'une Société d'aide à l'enfance, ou d'un surintendant, et à moins que la cour ne décide que le bien de cet enfant et l'intérêt de la société rendent cette incarcération nécessaire."

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DISPOSITION

TEXTE	NOTES EXPLICATIVES
59. (Suite) (f) confier l'enfant à une société d'aide à l'enfance, dûment organisée en vertu d'une loi de la Législature de la province et approuvée par le lieutenant-gouverneur en conseil, ou dans une municipalité où il n'existe pas de société d'aide à l'enfance, aux soins du surintendant, s'il en est un, pour une période de deux ans au plus, mais seulement après que le juge a pris connaissance d'un rapport préalable à la disposition au sujet de cet enfant.	Ce texte incorpore l'article 20(1)(h) actuel de la Loi sur les jeunes délinquants, en ajoutant comme conditions préalables que le rapport qui précède la disposition fasse l'objet d'un examen. Au sujet du délai de deux ans, voir le paragraphe 186 du Rapport.

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DISPOSITION

TEXTE	NOTES EXPLICATIVES
ADOLESCENT CONTREVENANT	
60. Lorsqu'il a été décidé qu'un adolescent est un adolescent contrevenant, et après que le juge a procédé à l'audition de la preuve sur la façon de disposer convenablement du cas, le juge peut rendre une ordonnance de disposition qui doit comprendre l'une ou plusieurs des mesures suivantes:	
(a) imposer une amende d'au plus cent dollars, qui peut être acquittée par versements périodiques ou autrement;	Le Comité a recommandé que l'amende maximum soit portée à cent dollars sauf dans le cas où un délinquant est âgé de moins de quatorze ans. (Voir la recommandation 69).
(b) rendre une ordonnance de restitution pour une somme n'excédant pas cent dollars, qui peut être payée par versements périodiques ou autrement;	Cette disposition est conforme à la recommandation 71 et au paragraphe 299 du Rapport. La restitution ne devrait s'appliquer que dans le cas d'une personne de 14 ans ou plus.

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DISPOSITION

TEXTE	NOTES EXPLICATIVES
60. (Suite)	
(c) placer l'adolescent sous la surveillance d'un agent de surveillance ou de toute autre personne qualifiée, aux conditions déterminées par le juge, mais la période visée par une telle ordonnance ne doit pas être de plus de deux ans;	Voir les notes explicatives en regard de l'alinéa (b) dans les articles qui ont trait à la disposition applicable à un enfant contrevenant et à un transgresseur.
(d) faire placer l'adolescent dans un foyer d'accueil ou un foyer d'accueil collectif appropriés, ou autre milieu protecteur, pour une période d'au plus deux ans, mais seulement après que le juge a pris connaissance d'un rapport préalable à la disposition au sujet de l'adolescent;	Voir les notes explicatives en regard de l'alinéa (c) concernant la disposition applicable à un enfant contrevenant.

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DISPOSITION

TEXTE	NOTES EXPLICATIVES
60. (Suite)	
(e) imposer à l'adolescent les conditions supplémentaires ou différentes qui peuvent paraître opportunes et favorables au bien de l'adolescent;	Voir les notes explicatives en regard de la disposition relative au transgresseur.
(f) confier à l'adolescent à une école de formation pour une période d'au plus trois ans, mais seulement après que le juge a pris connaissance d'un rapport préalable à la disposition au sujet de l'adolescent, et seulement après que tout a été fait pour essayer de traiter l'adolescent dans son propre foyer, ou dans un foyer d'accueil, un foyer d'accueil collectif ou autre milieu protecteur.	Voir les notes explicatives en regard de l'alinéa (e) concernant la disposition applicable à un "enfant contrevenant".

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DISPOSITION

TEXTE	NOTES EXPLICATIVES
60. (Suite)	
(g) confier l'adolescent à une société d'aide à l'enfance, dûment organisée en vertu d'une loi de la Législature de la province et approuvée par le lieutenant-gouverneur en conseil, ou, dans une municipalité où il n'existe pas de société d'aide à l'enfance, aux soins du surintendant, s'il en est un, pour une période de deux ans au plus, mais seulement après que le juge a pris connaissance d'un rapport préalable à la disposition au sujet de cet adolescent.	Ce texte incorpore l'article 20(1)(h) actuel de la Loi sur les jeunes délinquants, en ajoutant comme condition préalable que le rapport qui précède la disposition fasse l'objet d'un examen. Au sujet du délai de deux ans, voir le paragraphe 186 du Rapport.

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DISPOSITION

TEXTE

INFRACTION DE CIRCULATION

61. Lorsqu'il a été décidé qu'un enfant ou un adolescent était un enfant contrevenant, un adolescent contrevenant ou un transgresseur, selon le cas, à l'occasion d'une contravention ou d'une transgression en concernant la circulation, le tribunal pour mineurs peut, au lieu ou en sus de toute ordonnance qu'il peut rendre conformément aux articles 58, 59 ou 60 selon le cas, rendre les ordonnances prévues à l'alinéa (c) de l'article 94 ou l'une ou plusieurs d'entre elles.

NOTES EXPLICATIVES

Le Comité a proposé, au paragraphe 154 de son Rapport, ce qui suit:

"nous suggérons en outre que la loi pourrait être amendée, touchant les mesures qu'elle arrête en matière de disposition, en ce qu'elle devrait indiquer plus spécifiquement les pouvoirs du tribunal pour mineurs en matière d'infractions commises par les jeunes à l'encontre du Code de la route. Le tribunal pour mineurs devrait avoir compétence pour imposer des restrictions en matière d'usage d'une automobile, suspendre ou révoquer la licence du conducteur, obliger ce dernier à retourner à l'école de conduite."

Le Comité a aussi recommandé que des mesures soient prises pour compléter les législations provinciales sur l'attribution des points de démérite, la suspension ou la révocation de la licence, après une condamnation pour conduite contraire aux prescriptions du Code de la route ou à la suite d'une accumulation d'un nombre précis de points de démérite.

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ORDONNANCES DE MISE EN LIBERTÉ SURVEILLÉE

TEXTE	NOTES EXPLICATIVES
CONTENU	
62. (1) Lorsque, aux termes d'une ordonnance rendue en vertu de la présente loi, un enfant ou un adolescent est placé sous la surveillance d'un agent de surveillance, ou de toute autre personne qualifiée qu'elle désigne, une telle ordonnance doit contenir:	Ce texte est une adaptation de la recommandation 12 des "Proposals for Probation", publiés par la Canadian Corrections Associations, en date du 1er février 1967.
(a) le nom du tribunal qui la rend;	
(b) le nom du tribunal qui a compétence territoriale là où l'enfant ou l'adolescent réside ou résidera;	
(c) une disposition exigeant que l'enfant ou l'adolescent ait une bonne conduite;	
(d) une disposition exigeant que l'enfant ou l'adolescent comparaisse lorsqu'il en est requis au cours de la période couverte par l'ordonnance de mise en liberté surveillée de sorte que le juge puisse apporter des modifications à l'ordonnance qui assujettit l'enfant ou l'adolescent au régime de la liberté surveillée;	L'alinéa (d) établit clairement que le tribunal a le pouvoir de modifier une ordonnance de mise en liberté surveillée.

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ORDONNANCES DE MISE EN LIBERTÉ SURVEILLÉE

TEXTE	NOTES EXPLICATIVES
62. (1) (Suite)	
(e) une disposition exigeant que l'enfant ou l'adolescent soit sous la surveillance d'un agent de surveillance nommé ou affecté à un poste de cette juridiction territoriale, ou d'une personne qualifiée désignée par le juge;	
(f) une disposition exigeant que l'enfant ou l'adolescent se présente à l'agent de surveillance ou à la personne désignée conformément aux instructions données par le juge et reçoive à son foyer la visite de l'agent de surveillance ou de la personne désignée; et	
(g) une telle ordonnance peut contenir les conditions supplémentaires que le juge estime souhaitable dans les circonstances.	La recommandation 12(b) des "Proposals for Probation" approuve les pouvoirs discrétionnaires qui sont attribués au tribunal en vertu de l'article 638(2) du Code criminel.

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ORDONNANCES DE MISE EN LIBERTÉ SURVEILLÉE

TEXTE	NOTES EXPLICATIVES
CONTENU	
62. (2) Lorsque, aux termes d'une ordonnance rendue en vertu de la présente loi, un enfant ou un adolescent est placé sous la surveillance d'un agent de surveillance, ou de toute autre personne qualifiée qu'elle désigne, le juge qui rend l'ordonnance doit expliquer à l'enfant ou adolescent l'objet et l'effet d'une telle ordonnance.	Selon la recommandation 16 des "Proposals for Probation", le juge devrait expliquer à un adulte les modalités d'une ordonnance de libération conditionnelle; il semble donc approprié qu'une disposition enjoigne au juge d'expliquer à un enfant ou un adolescent une semblable ordonnance.

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ORDONNANCES DE MISE EN LIBERTÉ SURVEILLÉE

TEXTE	NOTES EXPLICATIVES
CONTENU	
62. (3) Une copie de l'ordonnance de mise en liberté surveillée, signée par le juge qui l'a rendue, est signifiée à l'enfant ou adolescent qui en fait l'objet, et à son père ou à sa mère ou aux deux, ou à son tuteur.	Cette disposition est conforme à la recommandation 17 des "Proposals for Probation" dont il a déjà été question et que la Canadian Corrections Association a présentée. Cette recommandation ajoute: "... et qu'il soit tenu d'endosser l'ordonnance originale attestant ainsi qu'une copie lui en a été signifiée, qu'il en comprend les modalités et qu'il s'engage à les observer." Il y aurait lieu de solliciter le point de vue des agents de surveillance avant d'insérer une telle disposition dans le projet de loi. Pour faire suite à la recommandation 18 des "Proposals for Probation" insérée dans le mémoire de la Canadian Corrections Association, la loi devrait peut-être exiger "que le tribunal envoie une copie de l'ordonnance à l'agent de surveillance du tribunal".

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DISPOSITION SUBSÉQUENTE

TEXTE	NOTES EXPLICATIVES
TRANSFERT DES ORDONNANCES DE MISE EN LIBERTÉ SURVEILLÉE	
63. Lorsque, en vertu de la présente loi, un enfant ou un adolescent en liberté surveillée va résider par la suite hors de la juridiction du juge qui a placé l'enfant en liberté surveillée, ce juge doit faire connaître au juge de la juridiction dans laquelle l'enfant ou l'adolescent va résider les circonstances entourant le cas, et faire parvenir une copie de son ordonnance de disposition en l'espèce à ce juge qui aura alors sur l'enfant ou adolescent les mêmes pouvoirs qu'il aurait eus si la cause avait été entendue à l'origine devant le tribunal dont il est juge.	La recommandation 73 du Rapport porte ce qui suit: "La loi devrait contenir des dispositions qui permettraient de transférer d'un tribunal à un autre les ordonnances de libération conditionnelle ..." (Voir également le paragraphe 305). L'Association des agents de surveillance d'Ontario a recommandé, dans son mémoire, l'adoption d'une disposition de ce genre. (Voir la recommandation 27, page 12 de ce mémoire.)

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DISPOSITION SUBSÉQUENTE

TEXTE	NOTES EXPLICATIVES
ORDONNANCE DE LIBÉRATION	
64. Lorsqu'un juge est d'avis qu'un enfant ou un adolescent qu'il a déclaré être un transgresseur, un enfant contrevenant, ou un adolescent contrevenant, selon le cas, n'a plus besoin de la surveillance du tribunal, il peut le libérer de la surveillance du tribunal, et dès lors rien d'autre ne peut être fait relativement à ce qui a soumis l'enfant ou l'adolescent à la juridiction du tribunal.	Cette disposition est conforme à la recommandation 28 et au paragraphe 186 du Rapport, lesquels endossent un principe énoncé dans le mémoire soumis par la Canadian Corrections Association. Ce principe est présentement énoncé à l'article 20(3) de la Loi actuelle sur les jeunes délinquants, qui renferme les mots suivants: "... la cour peut ... libérer l'enfant sur parole ou lui accorder sa libération..."

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DISPOSITION SUBSÉQUENTE

TEXTE	NOTES EXPLICATIVES
ENFANT OU ADOLESCENT CONDUIT DE NOUVEAU DEVANT LE JUGE 65. Lorsqu'il a été décidé qu'un enfant ou un adolescent est un transgresseur, un enfant contrevenant, ou un adolescent contrevenant, selon le cas, et lorsqu'il est encore sous la surveillance du tribunal, le juge peut, par sommation ou mandat, comme le prévoient les articles 21, 22, 23, 24 et 25 de la présente loi, faire conduire l'enfant devant le tribunal, et prendre toute mesure prévue à l'article 58 dans le cas d'un enfant ou d'un adolescent qui a été déclaré être un transgresseur, ou à l'article 59 dans le cas d'un enfant qui a été déclaré être un enfant contrevenant, ou à l'article 60 dans le cas d'un adolescent qui a été déclaré être un adolescent contrevenant, pourvu qu'un avis de l'audition ait été envoyé au père ou à la mère, aux deux parents, ou au tuteur, en conformité de l'article 26 de la présente loi, et pourvu que le tribunal ait procédé à l'audition de la preuve en conformité de l'article 57 de la présente loi.	Le Rapport ne renferme aucune recommandation à ce sujet; cependant, une telle disposition semble nécessaire et elle est implicitement comprise dans l'article 20(3) de la Loi actuelle sur les jeunes délinquants. (Les lois américaines renferment une disposition relative à "une ordonnance modificatrice": ainsi, la Standard Family Court Act, article 26; la loi de la Californie sur le même sujet, articles 775 et 776; la Uniform Juvenile Court Act, l'article 28; la loi de l'Etat de New-York sur le même sujet, les articles 762 et 776. Cette disposition permet à un juge d'envoyer un enfant ou un adolescent à une école de formation, lorsque cet enfant ou cet adolescent s'est révélé un sujet peu apte à être mis en liberté surveillée. Par ailleurs, en assurant que cet enfant "demeure placé sous la surveillance du tribunal", la

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DISPOSITION SUBSÉQUENTE

TEXTE	NOTES EXPLICATIVES
65. (Suite)	loi prévoit qu'un enfant qui a été libéré après paiement d'une amende ou qui a fait restitution ne peut être conduit de nouveau devant le tribunal pour y faire l'objet d'une nouvelle disposition.

RAPPORT PRÉALABLE À LA DISPOSITION

TEXTE	NOTES EXPLICATIVES
66. (1) Lorsque, dans une décision rendue en vertu de la présente loi, un juge a décidé que la dénonciation a été prouvée, il doit charger un agent de surveillance, ou une autre personne compétente, de faire enquête sur les antécédents personnels et familiaux et sur le milieu de l'enfant ou de l'adolescent qui fait l'objet de la dénonciation, et de lui présenter par écrit un rapport préalable à la disposition au sujet de l'enfant ou adolescent, fondé sur les conclusions de cette enquête.	Le Rapport de la Conférence de Couchiching recommande l'adoption de l'expression suivante: "état des antécédents au moment de la disposition". Même si le Rapport ne contient aucune recommandation spécifique rendant obligatoire la présentation d'un rapport antérieur à la sentence (ou préalable à la disposition), on peut lire ce qui suit dans la note 3, aux pages 190 et 191: "Pour ces motifs, l'opinion selon laquelle la loi devrait contenir, à titre d'exigence minimum, une mention spécifique du Rapport antérieur à la sentence n'est pas sans mérite, semble-t-il." À la suite de ce commentaire, les articles 23 et 24 de la Standard Juvenile Court Act ont été cités. La recommandation 22 du mémoire soumis par l'Association des agents de surveillance propose qu'une disposition de la loi exige une enquête sur les antécédents sociaux. L'expression

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RAPPORT PRÉALABLE À LA DISPOSITION

TEXTE	NOTES EXPLICATIVES
66. (1) (Suite)	enquêter sur les antécédents et le milieu personnel et familial" sont tirés de l'article 260.151 du Minnesota Code.
	L'article 23 de la Standard Juvenile Court Act renferme ce qui suit:
	"... L'enquête doit porter sur les circonstances du délit ou de la plainte, les antécédents sociaux et la situation actuelle de l'enfant et de sa famille ainsi que le programme proposé en vue du soin immédiat de l'enfant, prévu dans ce décret..."
	On admet généralement qu'un rapport de ce genre ne devrait pas être remis au juge tant que celui-ci n'a pas rendu sa décision. La recommandation 22 du Mémoire des Agents de surveillance déclare que cette enquête devrait être faite "à la suite d'une constatation de l'état de délinquance". Le commentaire qui accompagne l'article 21 du Premier avant-projet de la Uniform Juvenile Court Act se lit ainsi qu'il suit:

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RAPPORT PRÉALABLE À LA DISPOSITION

TEXTE	NOTES EXPLICATIVES
66. (1) (Suite)	"Des dispositions de ce genre sont fréquentes. Elles permettent au tribunal d'être pleinement renseigné avant de prendre des mesures. Les renseignements obtenus servent véritablement cette fin, et ne sont pas recueillis qu'en vue de prouver les allégations de la pétition". Le sous-alinéa (3) du paragraphe 303 du Rapport déclare ce qui suit: L'agent de surveillance devrait avoir la responsabilité d'effectuer l'enquête préalable à la sentence"; cependant, le rapport ne renferme aucune recommandation spécifique en vue d'une disposition législative dans ce sens.

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RAPPORT PRÉALABLE À LA DISPOSITION

TEXTE	NOTES EXPLICATIVES
66. (2) Les renseignements donnés par un enfant ou un adolescent à un agent de surveillance ou autre personne compétente au cours d'une enquête en conformité du paragraphe (1) ne peuvent être ni utilisés ni admissibles en preuve contre cet enfant ou adolescent dans aucune procédure criminelle exercée contre lui par la suite.	La recommandation 4 des "Proposals for Development of Probation in Canada", soumises par la Canadian Corrections Association, en date du 1er février 1967, propose ce qui suit: "Qu'une disposition soit édictée pour assurer que les renseignements donnés par un contrevenant à un agent de surveillance au cours de la préparation d'un rapport préalable à la sentence, ou pendant les entretiens d'orientation, soient considérées comme des communications protégées par le secret professionnel en tout ce qui concerne d'autres procédures civiles ou criminelles". Dans les notes qui suivent, on explique qu'il est essentiel que l'agent de surveillance établisse dans ses rapports avec son protégé une atmosphère de confiance si on désire que le contrevenant soit disposé à parler librement de sa vie personnelle. Ce mémoire a accordé une attention particulière à la surveillance des adultes; toutefois, il est présumé que les mêmes principes s'appliquent dans le présent cas.

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RAPPORT PRÉALABLE À LA DISPOSITION

TEXTE	NOTES EXPLICATIVES
66. (2) (Suite)	Selon la teneur actuelle du présent article, le contrevenant est protégé contre l'utilisation qu'on pourra faire de son témoignage dans une procédure criminelle. On a tenu compte à cet égard de l'article 5 de la Loi sur la preuve au Canada.
66. (3) Un rapport préalable à la disposition rédigé en conformité du paragraphe (1) est mis à la disposition de l'avocat ou autre personne qui comparaît avec l'enfant ou l'adolescent, ou si l'enfant ou l'adolescent comparaît seul, à la disposition de cet enfant ou adolescent, à la discrétion du juge, et à la disposition de l'avocat représentant la Couronne, lorsqu'un tel avocat a été nommé, avant que le tribunal n'ait disposé du cas, et l'avocat ou autre personne qui comparaît avec l'enfant ou l'adolescent doit avoir l'occasion de contre-interroger l'agent de surveillance ou autre personne compétente qui a présenté ce rapport.	L'agent de surveillance qui présente son rapport, généralement fondé surtout sur une preuve de oui-dire, devrait de droit être soumis à un contre-interrogatoire. (La recommandation 62 et le paragraphe 283 sont à cet égard des renvois pertinents au Rapport). La recommandation 5 et le commentaire suivant contenus dans les "Proposals for Probation" soumises par la Canadian Corrections Association traitent du sujet. La recommandation porte ce qui suit: "Le tribunal doit, avant de prendre des mesures, s'assurer (1) que le contrevenant ou son avocat ont eu la possibilité de lire le rapport et l'occasion de faire des

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RAPPORT PRÉALABLE À LA DISPOSITION

TEXTE	NOTES EXPLICATIVES
66. (3) (Suite)	commentaires à son sujet;
	(2) que le rapport antérieur à la sentence soit un document protégé par le secret professionnel et à la disposition (a) de la cour, (b) de l'accusé ou de son avocat, (c) du procureur de la Couronne, (d) de l'institution où l'accusé est envoyé, (e) du service de libération conditionnelle, (f) de toute autre personne que peut désigner le tribunal".
	L'article 5-1(2) de la Juvenile Court Act de l'Etat de l'Illinois porte ce qui suit:
	"Avant de rendre une ordonnance de disposition, le tribunal doit informer le représentant du ministère Public, les parents, le tuteur, le gardien ou le parent responsable ou son avocat, des faits relatés dans les rapports préparés à l'usage du tribunal et considérés par ce dernier, ainsi que des conclusions qu'ils contiennent, et fournir une occasion raisonnable,

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RAPPORT PRÉALABLE À LA DISPOSITION

TEXTE	NOTES EXPLICATIVES
66. (3) (Suite)	si on en fait la demande, de les contredire. Le tribunal peut ordonner, cependant, que les documents qui contiennent ces rapport ne soient soumis à aucune inspection, ou que les sources de renseignements confidentiels ne soient pas révélées". A la page 9 de la brochure intitulée "Theory and Development of Pre-sentence Reports in Ontario", préparée par G.G. McFarlane du Service de libération surveillée d'Ontario, il est indiqué que la pratique en Ontario est de soumettre des exemplaires du Rapport antérieur à la sentence aux juges, à la Couronne ainsi qu'à la défense. Aux termes actuels de la présente disposition, un Rapport sur les antécédents sociaux ne sera pas de droit soumis à un enfant ou à un adolescent qui n'est pas représenté par un avocat, mais il ne le sera qu'à la seule discrétion du juge. Le motif de cette restriction est assez apparent: les renseignements dans un rapport de ce genre peuvent causer à

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RAPPORT PRÉALABLE À LA DISPOSITION

TEXTE	NOTES EXPLICATIVES
66. (3) (Suite)	l'enfant ou à l'adolescent un tort considérable, par exemple si l'enfant est illégitime ou si sa mère est une prostituée, pour citer deux exemples tirées du paragraphe 281 du Rapport.
66. (4) Un rapport préalable à la disposition rédigé en conformité du paragraphe (1) doit être mis à la disposition non seulement des personnes énumérées au paragraphe (3) mais aussi d'une école de formation à laquelle l'enfant ou l'adolescent est envoyé, de tout agent de surveillance ou autre personne désignée sous la surveillance de qui l'enfant ou l'adolescent est placé, d'une commission des libérations conditionnelles et de toute autre personne désignée par le tribunal.	Cette disposition fait suite en partie à la recommandation 5 des "Proposals for Probation" de la Canadian Corrections Association, commentée ci-dessus.

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RAPPORT PRÉALABLE À LA DISPOSITION

TEXTE	NOTES EXPLICATIVES
66. (5) Un rapport préalable à la disposition rédigé en conformité du paragraphe (1) est considéré comme un document de la cour, et il fait partie du dossier relatif à l'enfant ou à l'adolescent que le rapport concerne.	La recommandation 1(4) des "Proposals for Probation" de la Canadian Corrections Association voudrait: "que les rapports préalables à la sentence soient des documents de la cour". Cette disposition établirait nettement que le Rapport doit être considéré comme faisant partie du dossier et doit jouir de la même protection contre les indiscrétions.

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RAPPORTS MÉDICAUX, ETC.

TEXTE	NOTES EXPLICATIVES
67. (1) Un juge peut ordonner qu'un enfant ou adolescent qui fait l'objet d'une dénonciation soit examiné par un médecin, un psychiatre, un psychologue, ou par des personnes compétentes dans une clinique affectée à la lutte contre des maladies vénériennes, mais un tel examen ne peut en aucun cas être ordonné avant qu'il n'ait été décidé que la dénonciation a été prouvée, sauf lorsque l'enfant ou l'adolescent est considéré comme atteint de maladie mentale au point d'être incapable de donner instruction à un avocat, ou est détenu et qu'un examen médical est ordonné pour vérifier qu'il n'est pas porteur d'une maladie contagieuse.	Même si le Rapport ne renferme aucune recommandation formelle au sujet des examens médicaux, le renvoi 4 aux pages 213 et 214 du Rapport porte ce qui suit: "Il est évident que l'examen d'un enfant par un psychiatre, un psychologue ou un médecin est nécessaire en certains cas. La loi devrait stipuler de façon explicite le pouvoir qu'a le tribunal d'ordonner que l'on procède aux examens pertinents, y compris les examens relatifs aux maladies vénériennes. La loi devrait aussi stipuler explicitement que le tribunal n'a pas le pouvoir d'ordonner que l'on procède à de tels examens, sauf peut-être à un examen médical ordinaire, avant qu'il ne soit prouvé que l'enfant a commis le délit dont il est accusé". La déclaration suivante tirée du paragraphe 265 du Rapport: "Jusqu'à ce que l'enfant soit trouvé coupable d'avoir commis l'acte dont on l'accuse, l'Etat ne devrait pas avoir le droit d'empiéter sur l'intérêt qu'a l'enfant de protéger son intimité,

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RAPPORTS MÉDICAUX, ETC

TEXTE	NOTES EXPLICATIVES
67. (1) (Suite)	sauf dans les cas les plus urgents. Un enfant considéré débile mental au point d'être incapable de renseigner son avocat doit être examiné par des experts scientifiques. De plus, un enfant en détention devra subir un examen physique afin de s'assurer qu'il n'est pas porteur de maladies contagieuses". Le pouvoir d'ordonner de tels examens est prévue par la Standard Juvenile Court Act, article 22 et, par exemple, par l'article 48.24 du Wisconsin Children's Code.

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RAPPORTS MEDICAUX, ETC.

TEXTE	NOTES EXPLICATIVES
TRAITEMENT	
67. (2) Lorsqu'un examen effectué en conformité du paragraphe (1) révèle que l'enfant ou l'adolescent qui subit l'examen a besoin d'un traitement, un juge peut ordonner que l'enfant ou l'adolescent subisse ce traitement.	Cette disposition a été insérée à la seule fin d'alimenter la discussion. L'article 22 de la Standard Juvenile Court Act renferme une disposition de ce genre. Le Rapport du Comité du ministère de la Justice n'a formulé aucune recommandation à cet égard. L'insertion de ce paragraphe dans la loi est discutable. Il aurait pour effet d'imposer à certaines personnes sans leur consentement et sans même qu'elles aient été déclarées des contrevenants, etc., des traitements médicaux, psychiatriques ou psychologiques. Tout ceci peut se faire sans formalité comme une condition de la liberté surveillée. Même si l'opportunité d'insérer dans la loi une disposition de ce genre peut prêter à discussion, on a estimé que le meilleur moyen d'attirer l'attention sur cette question particulière état précisément d'incorporer dans l'avant-projet de loi une disposition dans ce sens.

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RAPPORTS MÉDICAUX, ETC.

TEXTE	NOTES EXPLICATIVES
TRAITEMENT	
67. (3) Aux fins du paragraphe (1), le juge peut ordonner que l'enfant soit détenu pendant une période de 10 jours.	La recommandation 6 des "Proposals for Probation" (Canadian Corrections Association) traite de cette question. Le délai de 10 jours est purement arbitraire.

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RAPPORTS MÉDICAUX, ETC.

TEXTE	NOTES EXPLICATIVES
CARACTÈRE CONFIDENTIEL	
67. (4) Le contenu de tous les rapports reçus par le tribunal en conformité du paragraphe (1) doit être dévoilé à l'avocat de l'enfant ou de l'adolescent qui fait l'objet de ces rapports, et, si l'enfant ou l'adolescent est représenté par quelqu'un d'autre qu'un avocat, cette personne, même si elle est le père ou la mère de l'enfant ou de l'adolescent, doit être autorisée à prendre connaissance de ces rapports si elle en fait la demande et l'avocat ou la personne comparaissant avec l'enfant ou l'adolescent doit avoir la possibilité de contre-interroger toute personne qui a présenté un rapport fondé sur un examen auquel il a été procédé en conformité du paragraphe (1).	Ce qui, dans cette disposition, traite de la révélation de ce que contient un Rapport est conforme à la recommandation 62. Les paragraphes 281 et 283 traitent de cette question. Le Comité a estimé que l'avocat de l'enfant ou de l'adolescent ferait preuve de discrétion en décidant dans quelle mesure ces renseignements doivent être révélés à l'enfant ou à ses parents.

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OBSERVATION MÉDICALE

TEXTE	NOTES EXPLICATIVES
OBSERVATION MÉDICALE SOUS GARDE	
68. Un juge qui a reçu une dénonciation au sujet d'un enfant ou d'un adolescent en conformité de l'article 20, à tout moment pendant la comparution de l'enfant ou de l'adolescent devant lui, peut confier, par ordonnance écrite, l'enfant ou l'adolescent à la garde que le juge désigne, pour être mis en observation pendant une période de 30 jours au plus lorsque, selon son opinion appuyée par le témoignage d'au moins un médecin dûment qualifié, il y a raison de croire que l'enfant ou l'adolescent est atteint de maladie mentale.	Ce texte est une adaptation de l'article 451(c)(i) du Code criminel. La page 15 du Rapport de la Conférence de Couchiching renferme la déclaration suivante: "Lorsque des enfants sont pertubés au point de nécessiter des soins d'un caractère tel qu'il ne soit pas possible de les obtenir dans le cadre normal d'un établissement de détention, des dispositions devraient être prises pour recommander que les départements d'observation des hôpitaux soient utilisés aux fins de détention. On trouve dans le Code criminel des dispositions analogues en ce qui a trait aux adultes que le tribunal doit placer dans des hôpitaux pour traitements, mais il n'existe aucune disposition de ce genre pour les mineurs. En conséquence, certains enfants qui devraient être hospitalisés pour y recevoir un traitement psychiatrique sont renvoyés chez eux ou envoyé à une école de formation, ce qui, dans les deux cas, peut nuire à l'enfant." ....

MALADIE MENTALE AU MOMENT DU PROCÈS

TEXTE	NOTES EXPLICATIVES
69. (1) Un juge qui a reçu une dénonciation au sujet d'un enfant ou d'un adolescent en conformité de l'article 20, peut, à tout moment avant de décider que la dénonciation a été prouvée, ou de rejeter la dénonciation, lorsqu'il apparaît qu'il y a des raisons suffisantes de douter que l'accusé soit en état de conduire sa défense, par suite de maladie mentale, ordonner que soit instruite la question de savoir si l'accusé est alors, du fait de sa maladie mentale, incapable de subir l'audition des accusations portées contre lui.	Ce texte est une adaptation de l'article 524 du Code criminel.
(2) Le juge doit alors instruire cette question et en décider.	

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MALADIE MENTALE AU MOMENT DU PROCÈS

TEXTE	NOTES EXPLICATIVES
69. (3) Lorsque la conclusion est que l'enfant ou l'adolescent n'est pas, par suite de maladie mentale, incapable de subir l'audition des accusations portées contre lui, le juge doit procéder comme s'il n'avait pas ordonné l'instruction de cette question.	
69. (4) Lorsque la conclusion est que l'enfant ou l'adolescent est, par suite de maladie mentale, incapable de subir l'audition des accusations portées contre lui, le juge doit ordonner que l'enfant ou l'adolescent soit détenu jusqu'à ce que le lieutenant-gouverneur fasse connaître sa volonté, et tout plaidoyer qui a été enregistré doit être écarté.	
69. (5) Aucune procédure en conformité du présent article n'empêche l'enfant ou l'adolescent d'être poursuivi par la suite.	

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AGENTS DE SURVEILLANCE

TEXTE	NOTES EXPLICATIVES
70. Tout agent de surveillance dûment nommé en vertu des dispositions de la présente loi ou d'une loi provinciale a, dans l'exercice de ses fonctions comme tel, tous les pouvoirs d'un constable, et il est protégé contre toutes procédures civiles pour tout ce qu'il fait en exerçant de bonne foi les pouvoirs qui lui sont conférés par la présente loi.	Ce texte est une reproduction de l'article 30 actuel.

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AGENTS DE SURVEILLANCE

TEXTE

71. L'agent de surveillance est tenu de faire toute enquête que le tribunal peut exiger, d'être présent en cour, de fournir au tribunal les renseignements et l'aide qu'il juge nécessaires, et de prendre en charge l'enfant ou adolescent, avant ou après le procès, de la manière que le tribunal peut prescrire.

NOTES EXPLICATIVES

Ce texte est une reproduction de l'article 31 actuel.

La disposition relative à la présence de l'agent de surveillance "afin de représenter les intérêts de l'enfant lorsque la cause est entendue" a été omise, à la suite des remarques formulées par le Comité au paragraphe 247. Commentant alors le rôle de l'agent de surveillance qui présente la cause de l'enfant, le Comité a cité cette disposition et l'a vivement critiquée, en déclarant que:

"L'agent de surveillance a des comptes à rendre avant tout au tribunal, non à l'enfant", et que "l'expérience a montré qu'on ne doit pas s'attendre qu'une personne remplisse des fonctions contradictoires".

La disposition contenue dans la présente loi selon laquelle un enfant ou un adolescent peut être représenté par un avocat, ou aidé par un parent, remplace la partie retranchée de l'article 31.

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AGENTS DE SURVEILLANCE

TEXTE	NOTES EXPLICATIVES
71. (Suite)	Au paragraphe 303(3) du Rapport, le Comité a mentionné de façon particulière les responsabilités de l'agent de surveillance: enquête préalable à la sentence, et surveillance personnelle de l'enfant, qu'il s'agisse d'une surveillance immédiate ou d'une mesure consécutive à la libération. Ces fonctions sont prévues dans le présent avant-projet, sauf en ce qui concerne les mesures consécutives à la libération. Les fonctions à ce dernier égard ont été à dessein exclues, par le présent avant-projet de loi, du rôle attribué au tribunal pour mineurs. On peut discuter de la sagesse de cette décision.

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AGENTS DE SURVEILLANCE

TEXTE	NOTES EXPLICATIVES
72. Tout agent de surveillance, de quelque manière qu'il soit nommé, est, pour toutes les fins de la présente loi, sous la direction et soumis aux instructions du juge de la cour à laquelle il est rattaché.	Ce texte est la reproduction de l'article 32 actuel.

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AGENTS DE SURVEILLANCE

TEXTE	NOTES EXPLICATIVES
73. Lorsqu'il n'y a pas eu d'agent de surveillance de nommé en vertu d'un pouvoir provincial, et qu'il a été pourvu à la rémunération d'un tel agent par subvention municipale, souscription publique ou autrement, le tribunal doit nommer agents de surveillance une ou plusieurs personnes qualifiées.	Ce texte est la reproduction de l'article 29 actuel, sauf qu'on en a omis les mots suivants: "de concert avec le Comité de la cour pour jeunes délinquants". Cette disposition est insérée ici pour qu'il en soit discuté; on peut la conserver ou la retrancher.

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PREUVE

TEXTE	NOTES EXPLICATIVES
74. Aux fins de la présente loi, une personne est censée avoir atteint un certain âge à l'expiration du jour anniversaire de sa naissance correspondant à cet âge, et jusqu'alors elle est censée n'avoir pas atteint cet âge.	Cette disposition reproduit mot à mot l'article 3(1) du Code criminel. L'article 25 de la nouvelle loi d'interprétation (sanctionnée le 7 juillet 1967) se lit ainsi qu'il suit: "(9) Une personne est réputée ne pas avoir atteint un âge déterminé avant le commencement du jour anniversaire correspondant à cet âge." L'article 74 de l'avant-projet préparé aux fins d'étude est superflu, par suite de l'article 25(9) de la nouvelle Loi d'interprétation. Il pourrait être omis.

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PREUVE

TEXTE	NOTES EXPLICATIVES
75. (1) Dans toute procédure visée par la présente loi la production d'un certificat de naissance ou d'une copie de certificat de naissance présenté comme étant au nom de l'enfant ou de l'adolescent et comme étant certifié sous le seing du fonctionnaire compétent ou de la personne compétente à la garde de qui sont confiés les registres, ou une inscription ou un enregistrement faits par une société constituée en corporation ou par ses fonctionnaires ayant eu le contrôle ou le soin d'un enfant ou d'un adolescent à l'époque ou vers l'époque de son entrée au Canada, si l'inscription ou l'enregistrement a été fait avant le moment où la faute est alléguée avoir été commise, constituent des preuves prima facie de l'âge de l'enfant ou de l'adolescent.	Recommandation 57. "La loi devrait comporter des dispositions appropriées en vertu desquelles il existerait une méthode claire et simple d'établir l'âge d'un enfant appelé à comparaître devant le tribunal pour mineurs". La seconde partie de l'article 75(1) est tirée de l'article 565(1) du Code criminel. L'article 24 de la Loi sur la preuve au Canada devrait s'appliquer également. Le présent article fait disparaître la nécessité des sceaux et des signatures sur les documents certifiés.
75. (2) L'article 28 de la Loi sur la preuve au Canada ne s'applique pas au présent article.	Cet article exige que la partie qui produit une copie d'un document donne avis de son intention de le faire.

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PREUVE

TEXTE	NOTES EXPLICATIVES
76. À défaut d'autre preuve, ou sous forme de corroboration d'autre preuve, un juge d'un tribunal pour mineurs peut présumer l'âge d'un enfant ou d'un adolescent d'après son apparence.	Cette disposition est tirée de l'article 565(2) du Code criminel.

PREUVE

TEXTE	NOTES EXPLICATIVES
77. (1) La signification de tout document en conformité de la présente loi peut,	
(a) quand la signification en a été faite par un agent de la paix, ou une autre personne désignée par le juge, être prouvée par le témoignage oral sous serment de cet agent de la paix ou de cette autre personne, ou par son affidavit, reçu par un commissaire ou une autre personne autorisée à recevoir les affidavits;	
(b) quand la signification peut en être faite par la poste, être prouvée par le témoignage oral, sous serment, du fonctionnaire du tribunal dont la fonction est d'expédier de tels documents, ou par son affidavit reçu par un commissaire ou par une autre personne autorisée à recevoir les affidavits, ledit témoignage ou affidavit devant énoncer que le document a été expédié par la poste, à une date déterminée, à la personne auquelle il était adressé, et devant identifier une copie authentique de ce document.	Ce texte est une adaptation de l'article 26(3) de la Loi sur la preuve au Canada.

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PREUVE

TEXTE	NOTES EXPLICATIVES
77. (2) Si la preuve est produite sous forme d'affidavit en conformité du présent article, il n'est pas nécessaire de prouver la qualité officielle de la personne souscrivant l'affidavit, si ce renseignement est énoncé dans le corps de l'affidavit.	L'article 26(4) de la Loi sur la preuve au Canada.

PREUVE

TEXTE	NOTES EXPLICATIVES
L'ENFANT PEUT ÊTRE DISPENSÉ DE LA PRESTATION DE SERMENT	
78. (1) Lorsque, dans une procédure devant un tribunal pour mineurs, un jeune enfant qui est cité comme témoin ne comprend pas, de l'avis du juge, la nature d'un serment, le témoignage de cet enfant peut être reçu, bien qu'il ne soit pas rendu sous serment, si, de l'avis du juge, cet enfant est doué d'une intelligence suffisante pour justifier la réception de son témoignage, et s'il comprend qu'il a le devoir de dire la vérité.	Voir l'article actuel 19(1) de la Loi sur les jeunes délinquants; disposition identique à l'article 16(1) de la Loi sur la preuve au Canada.

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PREUVE

TEXTE	NOTES EXPLICATIVES
L'ENFANT PEUT ÊTRE DISPENSÉ DE LA PRESTATION DE SERMENT	
78. (2) Aucune cause ne peut être décidée sur ce seul témoignage, et il doit être corroboré par quelque autre preuve pertinente.	Le texte actuel de l'article 19(2) de la Loi sur les jeunes délinquants n'est pas reproduit parce qu'il renferme les mots suivants: "nul ne doit être déclaré coupable". Une telle expression n'est pas adéquate étant donné qu'elle s'appliquerait aux procès des adultes dans les seuls cas où une déclaration de culpabilité pourrait être prononcée en vertu de la nouvelle loi. Cela créerait des difficultés à l'égard des procédures intentées contre des enfants et des adolescents, puisque il ne peut y avoir de déclaration de culpabilité dans de semblables cas. Le texte de l'article 16(2) actuel de la Loi sur la preuve au Canada a été choisi de préférence, mot pour mot.

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PREUVE

TEXTE	NOTES EXPLICATIVES
79. Pour qu'une dénonciation, une sommation, un mandat, une déclaration de culpabilité, une ordonnance ou autre pièce ou document produit, émis ou enregistré dans une procédure prise ou intentée en exécution de la présente loi soit valide il n'est pas nécessaire qu'un sceau y soit attaché ou apposé.	Ce texte est une reproduction de l'article 18 actuel de la Loi sur les jeunes délinquants.

APPEL

TEXTE

80. (1) Le procureur général ou un enfant ou adolescent à l'égard de qui une décision a été rendue par un juge d'un tribunal pour mineurs, peuvent interjeter appel à la cour d'appel pour tout motif comportant exclusivement une question de droit, ou, avec la permission de la cour d'appel ou d'un juge de cette cour, pour tout motif que ladite cour estime un motif suffisant d'appel.

NOTES EXPLICATIVES

La recommandation 60 porte ce qui suit:

"La Couronne ainsi que l'accusé devraient avoir le droit d'en appeler de plano, à la cour d'appel, pour tout motif d'appel comportant une simple question de droit et, avec autorisation de la Cour d'appel, pour tout autre motif jugé suffisant par la Cour d'appel."

Dans les paragraphes 273 à 275, le Comité a expliqué qu'à son avis les présentes dispositions en matière d'appel, contenues à l'article 37 de la loi actuelle, étaient trop restrictives. On permet qu'un appel soit interjeté à un juge d'une Cour suprême, qui, à sa discrétion, peut refuser l'autorisation d'interjeter appel; il n'y a aucun appel de plano.

A titre de commentaire sur sa propre recommandation au sujet des questions d'appel, le Comité a déclaré, à la fin du paragraphe 275, ce qui suit:

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APPEL

TEXTE	NOTES EXPLICATIVES
80. (1) (Suite)	"L'adoption de la formule que nous proposons permettrait de trancher d'importantes questions de droit devant le seul tribunal dont les jugements s'appliquent dans toute la province. Cela contribuerait à s'assurer que le tribunal pour mineurs remplit son rôle propre: l'administration d'un système judiciaire individualisé, conformément à la loi." Des dispositions spéciales en matière d'appel se trouvent dans la Loi relative aux enquêtes sur les coalitions, qui est également une loi pénale particulière. Les articles 31(2a), (2b) et (2c) prévoient des appels des ordonnances d'interdiction. L'article 31(2a) statue sur les appels au tribunal approprié "... pour tout motif comportant une question de droit ou, si la permission d'interjeter appel est accordée par la cour auprès de laquelle l'appel est interjeté dans les 21 jours du jugement dont est appel ou dans le délai prolongé qu'accorde, pour

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APPEL

TEXTE	NOTES EXPLICATIVES
80. (1) (Suite)	des raisons spéciales, la cour auprès de laquelle l'appel est interjeté ou un juge de ladite cour, pour tout motif que ladite cour estime un motif suffisant d'appel."
80. (2) Le procureur général ou tout enfant ou adolescent au sujet duquel une décision a été rendue par un juge d'un tribunal pour mineurs peut en appeler à la Cour suprême du Canada d'une décision de la cour d'appel sur toute question de droit au sujet de laquelle un juge de la cour d'appel est dissident et, si l'autorisation d'appel est accordée par la Cour suprême du Canada, sur toute autre question de droit.	Ce paragraphe s'inspire dans une large mesure des dispositions de l'article 597 et de l'article 598 du Code criminel en ce qui a trait aux appels à la Cour suprême du Canada dans des causes instruites sur actes d'accusation.

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APPEL

TEXTE	NOTES EXPLICATIVES
80. (3) Sous réserve du paragraphe (1), les dispositions de la Partie XVlll du Code criminel s'appliquent <u>mutatis mutandis</u> aux appels sous le régime du présent article.	Le Comité n'a formulé aucune recommandation en ce qui concerne la procédure en matière d'appel. La Partie XVlll du Code criminel traite des "appels en ce qui concerne les actes criminels." L'article 37(1) de la loi actuelle contient les mots suivants: "... et les dispositions du Code criminel relatives aux appels des déclarations de culpabilité par voie de mise en accusation s'appliquent mutatis mutandis à cet appel, sauf que l'appel doit être interjeté à un juge de la Cour suprême au lieu de l'être à la Cour d'appel, avec un nouveau droit d'appel à la Cour d'appel par permission spéciale de cette Cour." L'article 31(2c) de la Loi relative aux enquêtes sur les coalitions, dont il a été fait mention ci-dessus, porte ce qui suit: "Sous réserve des paragraphes (2a) et (2b), les dispositions de la Partie XVlll du Code criminel, s'appliquent <u>mutatis mutandis aux appels</u>

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APPEL

TEXTE	NOTES EXPLICATIVES
80. (3) (Suite)	sous le régime du présent article." Cette disposition a été insérée dans l'avant-projet préparé aux fins d'étude. Elle a été rédigée en 1960 et elle constitue une manière plus récente d'aborder le problème que celle décrite à l'article 37 de la Loi sur les jeunes délinquants. La Partie XVIII du Code criminel comprend les articles 581 à 601. On entrevoit une difficulté possible: les articles compris dans la Partie XVIII traitent des "déclarations de culpabilité" (voir article 592), et "des personnes déclarées coupables d'un acte criminel" (voir article 597, qui traite des appels à la Cour suprême du Canada). En réalité, il n'a pas de "déclarations de culpabilité" sous le régime de la Loi concernant les enfants et les adolescents. Le jugement ou la sentence du tribunal est qualifié de "décision", et le tribunal déclarerait l'enfant ou l'adolescent "transgresseur", "enfant contrevenant", ou "adolescent contrevenant". ....

APPEL

TEXTE	NOTES EXPLICATIVES
80. (3) (Suite)	On a considéré que cette situation était prévue par l'expression "mutatis mutandis". Voir l'article 81(2) du présent avant-projet préparé pour fins d'étude.

EFFETS DE LA DÉCISION

TEXTE	NOTES EXPLICATIVES
EFFETS CIVILS DE LA DÉCISION	
81. (1) Lorsqu'il a été décidé qu'un enfant ou un adolescent était un "transgresseur", un "enfant contrevenant" ou un "adolescent contrevenant", selon le cas, on ne doit pas le tenir pour coupable d'une infraction criminelle aux fins de déterminer s'il a fait l'objet d'une condamnation antérieure ou s'il se trouve de quelque façon sujet à une incapacité quelconque par suite d'une condamnation pour infraction criminelle, et il peut répondre en conséquence concernant les condamnations antérieures.	La recommandation 13 porte ce qui suit: "La loi devrait indiquer clairement que le fait pour une personne d'être déclarée un "enfant contrevenant" ou un "jeune contrevenant" ne doit pas être considéré comme une condamnation pour infraction criminelle lorsqu'il s'agit de déterminer si une personne a déjà été condamnée ou se trouve de quelque façon sujette à une incapacité quelconque par suite d'une condamnation antérieure pour infractions criminelles". La dernière phrase du paragraphe 150 du Rapport est exactement la même, sauf qu'elle commence par les mots (version anglaise) "The statute should make clear" (alors que la recommandation 13 disait "The law should make clear"). Le dernier membre de phrase de la disposition en cause se lit ainsi qu'il suit: "et il peut répondre en conséquence à toute enquête concernant les condamnations antérieures"; ....

EFFETS DE LA DÉCISION

TEXTE	NOTES EXPLICATIVES
81. (1) (Suite)	ces mots ne font pas partie de la recommandation. Cet article et la disposition semblable relative à l'apposition de sceaux sur les dossiers (voir ci-dessous) sont parfois critiqués sous prétexte qu'elles donnent lieu à un "mensonge légalisé", qui place le législateur dans une situation embarrassante. Dans un article intitulé "The Expungement of Adjudication Records of Juvenile and Adult Offenders: A Problem of Status", M. Aidan R. Gough s'exprime ainsi, à la page 189 de son article: "... En félicitant le gouverneur Rockefeller pour le veto qu'il a opposé au New-York Bill, le District Attorney de Manhattan aurait déclaré que le bill ne tenait pas compte de la réalité puisqu'il "permettait à une personne de mentir au sujet de ses démêlés antérieurs avec la loi." Il n'est pas facile d'exprimer ces choses, mais le mensonge légalisé, - du moins de l'avis du rédacteur de ces lignes -, semble être condamnable

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EFFETS DE LA DÉCISION

TEXTE	NOTES EXPLICATIVES
81. (1) (Suite)	à certains égards, même si on peut prétendre que la fin justifie les moyens. En créant une fiction qui n'est pas nécessaire, on affaiblit l'intégrité de la loi. Si on ne fait que permettre au contrevenant de nier sa faute, on lui laisse toute la responsabilité; si on restreint l'interrogatoire à l'égard de la faute, on souligne le véritable problème, celui de l'attitude de la société". Le présent article devrait être étudié en même temps que l'article 82. En réalité, ces deux dispositions offrent deux solutions au même problème. De façon générale, il semble que l'article 82 soit préférable, puisqu'il ne comporte aucun "mensonge légalisé", et puisque, selon les mots de Gough, "le simple fait de permettre au contrevenant de nier sa faute lui laisse toute la responsabilité; circonscrire l'interrogatoire à l'égard de sa faute place l'accent sur le comportement de la société, c'est-à-dire là où il doit être".

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EFFETS DE LA DÉCISION

TEXTE	NOTES EXPLICATIVES
81. (1) (Suite)	L'article 654 du Code criminel, qui traite des incapacités civiles des personnes déclarées coupables de certaines infractions, est une illustration de ce genre de disposition insérée dans une loi pénale. L'article 81 a évidemment une application plus vaste que l'article 82.
81. (2) Nonobstant le paragraphe (1), lorsqu'il a été décidé qu'un enfant ou un adolescent était "un transgresseur", un "enfant contrevenant" ou un "adolescent contrevenant" en vertu de la présente loi, une telle décision est censée être une condamnation lorsque les dispositions du Code criminel sont rendues applicables <u>mutatis mutandis</u> à la présente loi.	La procédure applicable aux appels est celle que prévoit la Partie XVIII du Code, c'est-à-dire la procédure applicable aux appels en matière de condamnation prononcée par voie de mise en accusation. L'expression "déclaration de culpabilité" est, cela va de soi, utilisée dans la présente Partie. Voir l'article 80(3) du présent avant-projet.

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EFFETS DE LA DÉCISION

TEXTE	NOTES EXPLICATIVES
EMPLOYEURS - INTERDICTION DE QUESTIONNER	
82. (1) Il est illégal pour tout employeur qui travaille à l'exécution d'un ouvrage ou à l'exploitation d'une entreprise ou affaire relevant de l'autorité législative du Parlement du Canada ou dont le travail concerne une telle exécution ou exploitation, d'interroger tout candidat à un emploi, ou l'un de ses répondants, sur toute question concernant l'arrestation de ce candidat à l'occasion des procédures engagées selon la présente loi, ou sur toute autre question concernant ce candidat relativement aux procédures engagées en vertu de la présente loi.	La recommandation 84 qui traite de cette question se lit ainsi qu'il suit: "On devrait interdire aux employeurs qui sont sujets au contrôle du gouvernement fédéral de demander à celui qui postule un emploi si, au cours de son enfance, il a fait l'objet d'un jugement de délinquance." Le Comité déclare au paragraphe 342, ce qui suit: "Si l'on croyait désirable de ne pas nuire à une personne en diminuant ses chances d'obtenir un emploi à cause de son dossier à la cour juvénile, il semble bien que le remède serait le suivant: il faudrait interdire à un employeur d'interroger un candidat ou ses répondants sur ce sujet. La loi a déjà l'exemple de la législation sur la non-discrimination dans l'emploi, qui interdit les questions relatives à la race ou à la religion. Cependant, il reste à savoir si une telle interdiction dans une loi du

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EFFETS DE LA DÉCISION

TEXTE	NOTES EXPLICATIVES
82. (1) (Suite)	Parlement pourrait s'appliquer selon la constitution aux employeurs qui ne relèvent pas du Parlement quant aux méthodes d'emploi. Nous recommandons, en tout cas, qu'une telle législation soit présentée par le Parlement fédéral." Le Comité a ensuite exprimé l'avis qu'un tel problème ne saurait se régler par un texte législatif. En rédigeant cette disposition, on s'est reporté au Code canadien du Travail (Normes), chapitre 38 de 13-14 Elizabeth II. Les termes "employés" et "employeurs" utilisés dans cette loi, sont définis de façon générale aux alinéas (c) et (d) de l'article (2); toutefois, l'article 3(1) qui délimite le champs d'application de la loi, se lit comme suit: "La présente loi s'applique aux employés et à l'égard des employés dont le travail est lié ou rattaché à la mise en service de quelque ouvrage, entreprise ou affaire du ressort législatif du

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EFFETS DE LA DÉCISION

TEXTE	NOTES EXPLICATIVES
82. (1) (Suite)	Parlement du Canada..." Sous son aspect constitutionnel, le Code canadien du Travail diffère du présent projet de loi. Comme le Code statue sur les conditions de travail et non sur le crime, la compétence du Parlement est restreinte aux ouvrages, entreprises et affaires relevant de la juridiction fédérale. Par contre, le présent projet de loi se rattache au droit criminel qui, en vertu de la rubrique 27 de l'article 91 de l'Acte de l'Amérique du Nord Britannique, ressortit expressément au Parlement. L'article 82 définit une infraction criminelle dans le contexte d'une disposition d'ordre pénal et la réserve proposée par le Comité, insérée dans l'article 82(1) de l'avant-projet aux fins d'étude, ne semble pas nécessaire et pourrait être omise. L'article 367(a) du Code criminel, qui qualifie d'infraction le fait pour un employeur de refuser d'embaucher un membre d'un syndicat ouvrier,

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EFFETS DE LA DÉCISION

TEXTE	NOTES EXPLICATIVES
82. (1) (Suite)	illustre ce point. A cause de la multiplicité des méthodes d'embauchage qu'il met en cause, le problème est extrêmement complexe. Un employeur jouit habituellement du droit d'exiger qu'un postulant lui fournisse des renseignements sur ses antécédents académiques et professionnels et ce dernier est souvent prié d'indiquer les endroits où il a travaillé ou étudié; un postulant qui a été contraint de fréquenter une école de formation aurait vraisemblablement à révéler ce détail en fournissant un tel état de ses antécédents.
82. (2) Quiconque enfreint les dispositions du présent article est coupable d'une infraction punissable sur déclaration sommaire de culpabilité.	

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DOSSIERS

TEXTE	NOTES EXPLICATIVES
EMPREINTES DIGITALES ET PHOTOGRAPHIES	
83. (1) La loi sur l'indentification des criminels ne s'applique pas à un enfant ou à un adolescent qui est appréhendé par la police, à moins que le juge ne l'ordonne.	Le Rapport ne renferme aucune recommandation ni aucun détail à ce sujet. Presque toutes les lois américaines ou les lois qui s'en sont inspirées, que nous avons consultées, renferment une disposition semblable à celle-ci. Voici quelques exemples: La Standard Family Court Act Article 33 ..... "Sans le consentement du juge, ni les empreintes digitales ni une photographie de l'enfant gardé en détention ne doivent être prises, sauf si la cause est transférée pour que soit entamées les poursuites criminelles". OREGON 419.585 "Ni les empreintes digitales ni une photographie d'un enfant gardé en détention à quelque fin que ce soit sous le régime des dispositions 419.472 à 419.587 ne doivent être prises sauf dans les circonstances suivantes: (1) avec le consentement du tribunal pour mineurs; ou

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TEXTE

83. (1) (Suite)

NOTES EXPLICATIVES

(2) lorsque la cause de l'enfant a été déférée à un tribunal qui entend les causes criminelles; ou

(3) lorsqu'un enfant a été confié à la garde légale d'une institution d'Etat."

Kansas Statutes Annotated - Supplément - 1965 - Juvenile Code 38.815

"(f) Il est interdit de prendre les empreintes digitales ou une photographie d'un enfant de moins de 18 ans, détenu à quelque fin que ce soit, sans le consentement du juge du tribunal compétent; et si le juge le permet, les empreintes ainsi prises doivent être versées à un dossier civil et non à un dossier criminel."

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DOSSIERS

TEXTE	NOTES EXPLICATIVES
EMPREINTES DIGITALES ET PHOTOGRAPHIES	
83. (2) Le paragraphe (1) ne s'applique pas lorsque le juge s'est dessaisi à l'égard d'un adolescent en conformité de l'article 53 de la présente loi, ou lorsque le procureur général ou l'adolescent lui-même a demandé que le procès ait lieu devant le tribunal ordinaire en conformité de l'article 52 de la présente loi.	L'objet de ce paragraphe est d'assujettir à toutes les procédures applicables aux causes où sont impliqués des adultes l'adolescent qui est jugé devant un tribunal pour adultes. L'article 427 du Code criminel, toutefois, décrète que le procès d'une personne de moins de 16 ans doit se dérouler sans publicité. (Cet article devrait être modifié de façon à viser les personnes de moins de 17 ans).

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DOSSIERS

TEXTE	NOTES EXPLICATIVES
CONTENU DU DOSSIER	
84. Le greffier du tribunal doit conserver un dossier de chaque cause, qui comprendra le mandat, la sommation, la dénonciation, tout rapport, tous avis, toutes transcriptions et tous autres documents et pièces provenant du tribunal et qui concernent les procédures relatives à la cause.	En vertu d'un paragraphe distinct, le rapport préalable à la disposition fait maintenant partie du dossier, selon la recommandation applicable aux adultes dans les "Proposals for Probation" présentées par la Canadian Corrections Association. En faisant en sorte que le Rapport devienne une partie du dossier, on espère le rendre aussi confidentiel que le dossier lui-même: voilà ce que cherche à atteindre la proposition. Ces dispositions font donc dans une certaine mesure double emploi. L'article 419.567 du statut de l'Oregon exclut de semblables rapports dans les termes suivants: "... mais à l'exclusion des rapports et autres documents relatifs aux antécédents et au pronostic concernant l'enfant". Ce même article énumère ce que doit contenir les dossiers: "Le greffier du tribunal doit tenir un dossier de chaque affaire, qui doit comprendre les sommations et autres brefs, la pétition ainsi que tous les autres

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TEXTE

84. (Suite)

NOTES EXPLICATIVES

documents ayant un caractère de plaidoyers, motions, ordonnances du tribunal ou autres procédures produites auprès du tribunal, ..."

La recommandation 85 ainsi que le paragraphe 343 traitent de la question des dossiers des tribunaux pour mineurs. Voici le texte de la recommandation 85:

"Les dossiers du tribunal pour mineurs devraient être mis à la disposition des tribunaux pour adultes lorsque ces derniers sont appelés à statuer sur le cas d'un individu qui, après avoir été condamné par le tribunal pour mineurs, a été par la suite trouvé coupable d'une infraction par le tribunal pour adultes."

Au paragraphe 343, le Comité a étudié les divers aspects de la question de savoir si un tribunal pour mineurs devrait placer ses dossiers à la disposition d'employeurs éventuels et d'un tribunal; cependant, la seule recommandation qu'il ait faite à cet égard est celle qui a été citée ci-dessus. (Recommandation 85).

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DOSSIERS

TEXTE	NOTES EXPLICATIVES
84. (Suite)	L'article 574 du Code criminel prévoit une méthode de prouver les déclarations antérieures de culpabilité, qui peuvent être établies soit par la production d'un certificat ou par une copie de la condamnation.

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DOSSIERS

TEXTE	NOTES EXPLICATIVES
DOSSIERS - Confidentiel 85. Le dossier de chaque cause demeurera séparé des dossiers des adultes et sera soustrait à l'examen du public; il sera néanmoins accessible pour examen à l'enfant ou à l'adolescent qui fait l'objet du dossier, à l'avocat ou aux parents ou au tuteur de l'enfant ou de l'adolescent, à tout avocat nommé par le procureur général, à tout autre juge d'un tribunal pour mineurs lors d'une décision subséquente, ou à tout tribunal lors d'une condamnation subséquente, aux fins de procéder à une disposition ou de prononcer une sentence, et, avec le consentement du juge, aux personnes, aux institutions et organismes qui ont un légitime intérêt dans la surveillance ou le traitement de l'enfant ou de l'adolescent, ainsi qu'aux personnes qui ont un légitime intérêt dans les travaux du tribunal.	La présente disposition n'a fait l'objet d'aucune recommandation dans le Rapport. Si le rapport préalable à la disposition doit être considéré comme une partie du dossier, il en résultera une contradiction. Tandis qu'un autre article ne rend ce document accessible à l'enfant ou à l'adolescent qu'à la seule discrétion du juge, l'article en regard déclare que ce même document est de droit accessible à l'enfant ou à l'adolescent. Dans la plupart des Lois américaines et autres lois du même genre, le caractère confidentiel des dossiers des tribunaux pour mineurs a été l'objet d'un souci particulier. L'article 33 de la Standard Juvenile Court Act et de la Standard Family Court Act porte ce qui suit: "Ces dossiers peuvent être examinés par les parties en cause et par leurs avocats, par une institution ou une agence à la garde de laquelle un enfant a

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DOSSIERS

TEXTE	NOTES EXPLICATIVES
85. (Suite)	été confié, par un particulier qui a été nommé tuteur, et, si le juge y consent, par des personnes ayant un intérêt légitime dans les procédures ainsi que, en conformité des règles du tribunal ou d'une ordonnance spéciale de celui-ci, par des personnes faisant des recherches dans ce domaine, de même que par les personnes, les institutions et les agences ayant un intérêt légitime dans la protection, le bien-être ou le traitement de l'enfant". L'article 827 du California Code est ainsi conçu: "Une pétition produite dans une procédure devant un tribunal pour mineurs de même que tout rapport d'un agent de surveillance produit dans une cause semblable ne peuvent être consultés que par le personnel du tribunal, le mineur qui est visé par les procédures, ses parents ou son tuteur, les avocats représentant ces parties, et les autres personnes que le juge du tribunal pour mineurs peut désigner".

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DOSSIERS

TEXTE	NOTES EXPLICATIVES
DOSSIERS - Scellement	
86. (1) Dans toute cause où une dénonciation a été reçue par un juge d'un tribunal pour mineurs à l'égard de toute personne en vertu de la présente loi, cette personne peut, cinq ans ou plus après que la compétence du juge du tribunal pour mineurs a pris fin à son égard ou cinq ans ou plus après que cette personne a été libérée d'une école de formation où elle a été placée à la suite de la décision et de la disposition relative à une dénonciation reçue par un juge d'un tribunal pour mineurs, présenter une motion devant ce juge d'un tribunal pour mineurs demandant que le dossier relatif à son cas soit scellé y compris les pièces du tribunal, les pièces de son arrestation et toutes autres pièces confiées à la garde de fonctionnaires publics ou d'autres personnes, ou d'organismes, y compris les organismes d'application de la loi qui, d'après les allégations de son avis de motion ont sous leur garde de telles pièces.	Le présent article n'a été inséré ici qu'aux fins d'étude Il ne serait pas nécessaire étant donné l'article 85 qui traite du caractère confidentiel des dossiers. Aucune recommandation expresse ne vise la destruction ou le scellement des pièces. Le Comité, au paragraphe 343, a fait quelques commentaires, il est vrai, sur l'opportunité d'interdire aux employeurs éventuels l'accès des dossiers des mineurs. Lors de la rédaction du présent article, on s'est reporté à l'article 781 de California Juvenile Court Law. La première partie de l'article 781, qui se compare à la disposition reproduite en regard, est ainsi conçue: "Dans tous les cas où une requête a été produite à un tribunal pour mineurs demandant que soient ouvertes des procédures pour faire déclarer une personne enfant à charge ou pupille du tribunal, ou dans tous les cas où une personne est sommée de

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DOSSIERS

TEXTE	NOTES EXPLICATIVES
86. (1) (Suite)	comparaître devant un agent de surveillance ou est traduite devant un tel agent en conformité de l'article 626, cette personne, ou l'agent de surveillance du comté, peut, dès que cinq années se sont écoulées après que la compétence du tribunal pour mineurs a pris fin relativement à cette personne, ou dans le cas où aucune requête n'a été produite, dès que cinq années se sont écoulées depuis que cette personne a été sommée de comparaître devant un agent de surveillance ou a été traduite devant un tel agent en conformité de l'article 626, demander au tribunal que soient scellés les dossiers, y compris les pièces relatives à l'arrestation, concernant cette personne qui se trouvent en la garde du tribunal pour mineurs et de l'agent de surveillance et d'autres semblables agences, notamment les services chargés de l'application de la loi et les fonctionnaires publics, qui, ainsi que le prétend le requérant dans sa requête ont la garde de ces dossiers".

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DOSSIERS

TEXTE	NOTES EXPLICATIVES
DOSSIERS - Scellement	
86. (2) Lorsqu'un juge d'un tribunal pour mineurs reçoit un avis de motion en conformité du paragraphe (1), il doit le notifier au procureur de la Couronne de la juridiction territoriale où il se trouve, à un agent de surveillance et à toute autre personne qui détient des preuves pertinentes en la matière et il doit fixer une date pour l'audition de la motion aux fins de déterminer si, depuis que la compétence du tribunal à l'égard de la personne qui a présenté la motion a pris fin ou depuis la libération de cette dernière de l'école de formation, elle a été déclarée être un enfant contrevenant ou un adolescent contrevenant au sens de la présente loi, ou a été condamnée pour quelque infraction punissable sur acte d'accusation ou sur déclaration sommaire de culpabilité en vertu de toute autre loi, et si, dans l'opinion juge, elle a vécu dans le respect de la loi.	La partie correspondante de l'article 781 de la loi de la Californie se lit ainsi qu'il suit: "Le tribunal doit adresser un avis au procureur du ministère Public représentant le comté, et l'agent de surveillance de ce comté peut alors, s'il n'est pas le signataire, de même que ce procureur du ministère Public ou cet agent de surveillance ou l'un ou l'autre de leurs adjoints ou quelque autre personne possédant des renseignements pertinents, témoigner à l'audition de la pétition".

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DOSSIERS

TEXTE	NOTES EXPLICATIVES
DOSSIERS - Scellement	
86. (2) Lorsqu'un juge d'un tribunal pour mineurs reçoit un avis de motion en conformité du paragraphe (1), il doit le notifier au procureur de la Couronne de la juridiction territoriale où il se trouve, à un agent de surveillance et à toute autre personne qui détient des preuves pertinentes en la matière et il doit fixer une date pour l'audition de la motion aux fins de déterminer si, depuis que la compétence du tribunal à l'égard de la personne qui a présenté la motion a pris fin ou depuis la libération de cette dernière de l'école de formation, elle a été déclarée être un enfant contrevenant ou un adolescent contrevenant au sens de la présente loi, ou a été condamnée pour quelque infraction punissable sur acte d'accusation ou sur déclaration sommaire de culpabilité en vertu de toute autre loi, et si, dans l'opinion juge, elle a vécu dans le respect de la loi.	La partie correspondante de l'article 781 de la loi de la Californie se lit ainsi qu'il suit: "Le tribunal doit adresser un avis au procureur du ministère Public représentant le comté, et l'agent de surveillance de ce comté peut alors, s'il n'est pas le signataire, de même que ce procureur du ministère Public ou cet agent de surveillance ou l'un ou l'autre de leurs adjoints ou quelque autre personne possédant des renseignements pertinents, témoigner à l'audition de la pétition".

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DOSSIERS

TEXTE	NOTES EXPLICATIVES
DOSSIERS - Scellement	
86. (3) Si, après une audition tenue en conformité du paragraphe (2), le juge du tribunal pour mineurs est convaincu que la personne qui a présenté la motion vit dans le respect de la loi et s'est réadaptée, le juge du tribunal pour mineurs doit ordonner le scellement de tous dossiers, documents ou autres pièces concernant cette personne, qui sont sous la garde du tribunal pour mineurs, ainsi que de toutes les autres pièces concernant cette personne qui sont sous la garde du tribunal pour mineurs, ainsi que de toutes les autres pièces concernant cette personne qui sont sous la garde des autres personnes, organismes et fonctionnaires nommés dans l'ordonnance.	La partie correspondante de L'article 781 de la Loi de la Californie se lit ainsi qu'il suit: "Si, après l'audition, le tribunal constate que depuis qu'a pris fin cette compétence ou que s'est terminée cette action en conformité de l'article 626, selon le cas, il n'a pas été déclaré coupable d'un délit ni d'une inconduite impliquant une turpitude morale et qu'il a été réintégré dans la société à la satisfaction du tribunal, le tribunal doit ordonner le retrait de toutes pièces à conviction, de tous documents, et de toutes autres pièces concernant la cause de cette personne, qui se trouvent en la possession du tribunal pour mineurs, y compris le dossier du tribunal pour mineurs, les inscriptions au plumitif, les extraits de jugement, de même que tous les autres documents concernant cette cause qui se trouvent en la possession d'autres agences et d'autres fonctionnaires qui peuvent être nommés dans l'ordonnance". ....

DOSSIERS

TEXTE	NOTES EXPLICATIVES
DOSSIERS - Scellement	
86. (4) Dès qu'une ordonnance a été rendue en conformité du paragraphe (3), les procédures visées par l'ordonnance sont censées n'avoir jamais existé, et la personne peut répondre en conséquence à toute demande de renseignement relative aux procédures qui ont fait l'object d'une ordonnance de scellement.	La partie correspondante de l'article 781 de la loi de la Californie se lit ainsi qu'il suit: "Par la suite, les procédures relatives à cette affaire sont réputées n'avoir jamais été entamées, et cette personne peut, dans toute enquête relative aux événements au sujet desquels le retrait des pièces a été ordonné, répondre comme si de telles procédures n'avaient jamais été entamées". Au sujet de l'expression "mensonge légalisé" voir la note explicative en regard de l'article 81 (1) du présent avant-projet.

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DOSSIERS

TEXTE	NOTES EXPLICATIVES
DOSSIERS - Scellement	
86. (5) Le juge du tribunal pour mineurs doit envoyer une copie de l'ordonnance à chaque personne, organisme et fonctionnaire nommés dans l'ordonnance, et ces personnes, organismes et fonctionnaires doivent sceller les dossiers qu'ils ont sous leur garde, comme le leur enjoint l'ordonnance, et faire savoir au tribunal qu'ils s'y sont conformés et ils doivent sceller la copie de l'ordonnance qu'ils ont reçue.	La partie correspondante de l'article 781 de la loi de la Californie est ainsi conçue: "Le tribunal doit adresser une copie de l'ordonnance à chaque agence et à chaque fonctionnaire qui est nommé, et cette agence et ce fonctionnaire doivent sceller les dossiers qui sont en la garde du tribunal ainsi que le prescrit l'ordonnance, informer le tribunal qu'il a été donné suite à ces directives et sceller alors la copie de l'ordonnance du tribunal relative au retrait des pièces que cette agence ou ce fonctionnaire a reçue".

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DOSSIERS

TEXTE	NOTES EXPLICATIVES
DOSSIERS - Scellement 86. (6) Toute personne qui reçoit une ordonnance conformément au paragraphe (5) peut être déclarée coupable d'outrage au tribunal si elle refuse ou omet de se conformer à cette ordonnance dans un délai raisonnable après l'avoir reçue.	L'article 38-815(h) des Kansas Statutes Annotated (Supplément de 1965) décrète, après avoir statué sur la destruction des pièces: "... et, s'il refuse ou omet de le faire dans un délai raisonnable après avoir reçu une telle ordonnance, il peut être déclaré coupable d'outrage au tribunal et puni en conséquence". La Loi de la Californie ne renferme aucune disposition relative à l'outrage au tribunal.

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DOSSIERS

TEXTE	NOTES EXPLICATIVES
DOSSIERS - Scellement 86. (7) La personne qui fait l'objet des dossiers scellés conformément au présent article peut demander à une cour supérieure de juridiction criminelle l'émission d'une ordonnance pour qu'une personne nommément désignée soit autorisée à consulter les pièces scellées en conformité du présent article, et la cour supérieure de juridiction criminelle peut ordonner qu'il en soit ainsi, sinon, ces dossiers ne peuvent être consultés.	La partie correspondante de L'article 781 de la loi de la Californie est ainsi rédigée: "La personne dont traitent les pièces scellées en conformité du présent article peut demander au tribunal supérieur de permettre que des personnes nommées dans la requête consultent les pièces, et le tribunal supérieur peut ainsi l'ordonner. Sinon, ces pièces ne peuvent être consultées". Mr. Aidan R. Gough, dans son article intitulé "The Expungement of Adjudication Records of Juvenile and Adult Offenders: A Problem of Status" fait le commentaire suivant: "La loi décrète tout simplement que la personne dont les dossiers sont scellés peut, par la suite, demander au tribunal d'accorder à des personnes désignées dans la requête le droit de consulter ces dossiers dans le but de compléter les enquêtes relatives aux emplois d'une nature hautement confidentielle. ....

DOSSIERS

TEXTE	NOTES EXPLICATIVES
DOSSIERS - Scellement 86. (8) Une demande à une cour supérieure de juridiction criminelle faite en conformité du paragraphe (7) doit être faite de la manière indiquée par les règles de cette cour.	Le scellement et la destruction des dossiers sont étudiés par Mr. Aidan R. Gough, dans l'article mentionné ci-dessus, qu'a publié le Washington University Law Quarterly, (vol. 1966, n° 2, avril 1966, page 147 à 190) et que le Children's Bureau de Washington a fait réimprimer. Cette question est également traitée aux pages 286 à 289 d'une note parue dans la Columbia Law Review de février 1967 (vol. 67, n° 2). Il est intéressant de noter les recommandations relatives aux dossiers des tribunaux pour mineurs que contient le Rapport du Comité spécial de la Législature d'Ontario chargé d'enquêter sur les problèmes de la jeunesse, paru en mars 1967. En voici un extrait, tiré de la page 273 du Rapport: "Le Comité spécial recommande que: 248. L'utilisation des dossiers des adolescents dans les tribunaux pour adultes devraient être réduits à un minimum absolu, compatible avec le principe selon lequel les accusations portées devant les tribunaux pour mineurs ....

DOSSIERS

TEXTE	NOTES EXPLICATIVES
86. (8) (Suite)	ou les comparutions devant ces tribunaux ne devrait pas influencer le mécanisme propre au prononcé d'une sentence par les tribunaux pour adultes.
	249. Les dossiers des adolescents ne devraient en aucune circonstance être montrés à des maisons d'affaire pour être consultés à des fins de recrutement de personnel ou de crédit. Toute personne utilisant à de telles fins ces renseignements devrait être punissable par la loi.
	250. Les dossiers des adolescents devraient être radiés lorsque cinq ans se sont écoulés depuis la dernière faute du délinquant".
	Le Comité n'a pas étudié les diverses méthodes auxquelles on peut recourir à cet égard.

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RESTRICTION

TEXTE	NOTES EXPLICATIVES
INCARCÉRATION DANS DES INSTITUTIONS POUR ADULTES	
87. (1) Sous réserve du paragraphe (2) aucun enfant ou adolescent ne doit être écroué dans une institution pénale où des prisonniers adultes sont détenus.	En ce qui concerne ce sujet, le Rapport Fauteux a fait à la page 27, le commentaire suivant: "Jeunes délinquants Il est surprenant de constater que, sous le régime des lois qui existent actuellement au Canada, une personne âgée de moins de 16 ans peut subir son procès pour une infraction criminelle devant un tribunal pour adultes et être condamnée à une longue période d'emprisonnement dans un pénitencier. Cela peut se produire dans n'importe laquelle des nombreuses régions où la Loi sur les jeunes délinquants n'est pas en vigueur. Certains organismes provinciaux ont été autorisés en vertu de la Loi sur les prisons et les maisons de correction à prendre certaines mesures déterminées à l'égard de cette catégorie de délinquants, mais la situation est, cependant, loin d'être satisfaisante, si l'on considère l'ensemble du Canada.

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RESTRICTION

TEXTE	NOTES EXPLICATIVES
87. (1) (Suite)	Le Rapport du commissaire des Pénitenciers pour l'année financière terminée le 31 mars 1955 révèle que quatorze personnes âgées de moins de 16 ans ont été admises dans les pénitenciers du Canada au cours de l'année en question. Le système pénal du Canada permet cet état de choses. Nous estimons qu'il faut sans délai modifier la Loi de façon à ce qu'il ne soit pas permis de condamner une personne âgée de moins de 16 ans à être détenue dans des institutions pénitenciaires où les adultes sont enfermés et nous faisons une recommandation en conséquence".

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RESTRICTION

TEXTE	NOTES EXPLICATIVES
87. (2) Le paragraphe (1) ne s'applique pas lorsqu'un juge d'un tribunal pour mineurs a rendu une ordonnance en conformité de l'article 53(1)(a) de la présente loi à l'égard d'un adolescent de plus de seize ans.	Le critère en ce qui concerne le renvoi d'une affaire à un tribunal pour adultes, tant pour le procès que pour la sentence, doit être le fait que l'adolescent n'est pas apte à subir un traitement dans une institution où l'on admet les adolescents contrevenants, ou le fait que l'adolescent en cause devrait demeurer en détention pendant une période plus longue que le délai que le tribunal pour mineurs est autorisé à fixer au moyen d'une ordonnance. (Recommandation 16). Une telle critique implique que l'adolescent contrevenant ne peut être détenu que dans une institution destinée à des prisonniers adultes. Le présent article ne tranche pas la question des institutions auxquelles doivent être envoyés les adolescents de moins de 16 ans dont les cas ont été déférés à un tribunal pour adultes tant à l'égard du procès que de leur sentence.

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DROIT DE GARDE

TEXTE	NOTES EXPLICATIVES
88. Un parent nourricier ou toute autre personne auprès desquels un enfant ou un adolescent a été placé par un juge d'un tribunal pour mineurs en vertu des dispositions de la présente loi a le droit d'exercer la garde physique de cet enfant ou de cet adolescent et il a le droit et le devoir d'en prendre soin, de le protéger, de le former et de l'instruire, d'assurer son bien-être physique, mental et moral, sous réserve des conditions et des limitations que l'ordonnance du juge du tribunal pour mineurs peut contenir, et sous réserve des droits et des devoirs que conservent le père et la mère de cet enfant ou de cet adolescent.	Ce Comité n'a fait aucune recommandation particulière en ce qui concerne les rapports juridiques entre un père ou mère nourriciers (foster parent), le tribunal et les vrais parents; toutefois, il reconnaît qu'il existe là un problème. Le paragraphe 309 du Rapport y fait allusion en ces termes: "Le fait de placer un enfant dans un foyer d'adoption ne fait pas perdre aux parents leurs droits de garde. C'est la raison pour laquelle certaines organisations qui dispensent des soins aux enfants ont refusé d'accepter de jeunes délinquants qui leur étaient envoyés par des tribunaux. Nous ne comprenons pas pourquoi ces organisations adoptent une telle attitude, car elles se chargent en effet de prendre soin d'autres enfants sur lesquels elles n'ont aucun droit de garde, nous voulons parler des enfants moralement abandonnés ou des enfants à charge. Nous reconnaissons, cependant, qu'il

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DROIT DE GARDE

TEXTE	NOTES EXPLICATIVES
88. (Suite)	peut y avoir des ambiguîtés dans le texte qui traite des rapports entre les parents adoptifs, le tribunal et les parents de l'enfant. Le texte des nouvelles lois ne devrait plus comporter de telles ambiguîtés." Le Comité déclare que ces ambiguîtés devraient être éliminées de toute nouvelle loi, mais il ne donne aucune directive à cet égard. Il y a lieu de se reporter à l'article 25 du Premier avant-projet de la Uniform Juvenile Court Act, dont voici le texte: "Droits et devoirs du gardien légal. Un gardien, à qui le tribunal en vertu de la présente loi a attribué une garde légale, a le droit d'exercer la garde physique de cet enfant et le droit et le devoir d'en prendre soin, de le protéger, de le former et de l'instruire et d'assurer son bien-être physique, mental et moral; sous réserve des conditions et des limitations que l'ordonnance peut contenir, et des droits et des devoirs qui demeurent attribués au père ou à la mère ou au tuteur de l'enfant." ....

RELATIONS JURIDIQUES

TEXTE

88. (Suite)

NOTES EXPLICATIVES

La Standard Juvenile Court Act de 1959 définit ainsi l'expression "garde légale":

"... les rapports créés par le décret du tribunal qui impose au gardien la responsabilité physique de l'enfant et l'obligation de le protéger, de le former et de le discipliner et de lui fournir l'alimentation, le gîte, l'éducation et les soins médicaux ordinaires, le tout sujet aux droits et responsabilités parentaux qui subsistent et qui sont attribués au tuteur de la personne en cause."

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RESPONSABILITÉ PÉCUNIAIRE DES MUNICIPALITÉS ET DES PARENTS

TEXTE

89. Chaque fois qu'un juge d'un tribunal pour mineurs rend une ordonnance en vertu de la présente loi confiant un enfant ou un adolescent à une institution, ou plaçant un enfant ou un adolescent dans un foyer d'accueil, un foyer collectif ou un autre milieu protecteur, lorsque, s'il avait rendu cette ordonnance en conformité de la législation sur le bien-être des enfants de la province dans laquelle l'ordonnance est rendue, il aurait pu rendre une ordonnance enjoignant aux parents de cet enfant ou de cet adolescent, ou à la municipalité dans laquelle réside cet enfant ou cet adolescent de contribuer à l'entretien de cet enfant ou de cet adolescent, il peut rendre une ordonnance enjoignant aux parents de cet enfant ou de cet adolescent ou à la municipalité où réside cet enfant ou cet adolescent de contribuer à l'entretien de cet enfant ou de cet adolescent, selon les modalités qu'il peut ordonner en conformité des lois de cette province, et, dans de telles circonstances, on doit appliquer, à ces fins, les dispositions et définitions pertinentes de la législation provinciale.

NOTES EXPLICATIVES

L'article 20(2) de la Loi sur les jeunes délinquants porte ce qui suit:

"Dans chacun de ces cas, (il s'agit de mesures relatives à la façon de disposer de l'affaire) la cour est autorisée à rendre une ordonnance enjoignant aux père et mère de l'enfant ou au père ou à la mère ou la municipalité à laquelle il appartient de verser pour son entretien telle somme que la cour peut déterminer et, lorsque cet ordre est donné à la municipalité, cette dernière peut à l'occasion recouvrer des père et mère ou du père ou de la mère de l'enfant la somme ou les sommes qu'elle a versées en exécution de cet ordre".

Cet article est de la compétence du Parlement fédéral. (Voir l'arrêt Re: Dunne (1962), page 595 des Rapports judiciaires d'Ontario, décision rendue par le juge Schatz, de la Haute Cour d'Ontario).

Dans les paragraphes 337 à 339 du Rapport, le Comité déclare que l'article 20(2) a soulevé des problèmes d'ordre administratif

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RESPONSABILITÉ PÉCUNIAIRE DES MUNICIPALITÉS ET DES PARENTS

TEXTE	NOTES EXPLICATIVES
89. (Suite)	et de façon générale s'est révélé moins satisfaisant que les dispositions relatives au paiement de cet ordre que renferment les lois provinciales de bien-être social. Le Comité a recommandé ce qui suit: "On devrait trouver un moyen quelconque rendant applicables les dispositions de la législation provinciale engageant la responsabilité financière des parents et des municipalités, chaque fois qu'une ordonnance d'entretien aux termes de la loi fédérale est rendue par le tribunal pour mineurs". (Recommandation 83).

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CONSIDÉRATIONS D'ORDRE RELIGIEUX

TEXTE	NOTES EXPLICATIVES
90. (1) Aucun enfant protestant auquel sont appliquées des dispositions de la présente loi, ne sera confié aux soins d'une société catholique d'aide à l'enfance ni ne sera placé dans un foyer constitué par une famille catholique; et aucun enfant catholique auquel sont appliquées des dispositions de la présente loi ne sera confié aux soins d'une société protestante d'aide à l'enfance ni ne sera placé dans un foyer constitué par une famille protestante; mais le présent article ne s'applique pas au placement d'enfants dans un foyer ou un refuge temporaire pour enfants établi sous l'autorité d'une loi de la province, ni, dans une municipalité où il n'y a qu'une seule société d'aide à l'enfance, à cette société d'aide à l'enfance.	Ce texte reproduit l'article 23 actuel de la Loi sur les jeunes délinquants. On peut discuter sur la question de savoir si la loi devrait être plus souple. La Illinois Juvenile Court Act porte ce qui suit: Article 5-7, paragraphe (2) "En plaçant ainsi un enfant, le tribunal doit, chaque fois que la chose est possible, choisir une personne ayant les mêmes croyances religieuses que l'adolescent en cause ou un organisme privé dirigé par des personnes appartenant à la même confession religieuse que l'adolescent. En outre, chaque fois que d'autres solutions de placement sont possibles, le tribunal doit connaître et considérer, autant que les circonstances de chaque cas l'exigent, les vues et les préférences de l'adolescent." La California Juvenile Court Law est plus rigide; voici ce qu'on y trouve: "Tous les placements dans des institutions ou dans des familles particulières, que prévoit le présent chapitre, doivent s'effec-

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CONSIDÉRATIONS D'ORDRE RELIGIEUX

TEXTE	NOTES EXPLICATIVES
90. (1) (Suite)	tuer, dans la mesure où la chose est possible, dans des institutions ou dans des familles où se pratique la même croyance religieuse que celle de la personne ainsi placée ou que celle de père et mère ou dans des institutions qui offrent des possibilités d'instruction dans ces croyances religieuses." Le Rapport ne renferme aucune recommandation à cet égard.
90. (2) Si un enfant protestant est confié aux soins d'une société catholique d'aide à l'enfance ou placé dans un foyer d'accueil constitué par une famille catholique ou si un enfant catholique est confié aux soins d'une société protestante d'aide à l'enfance ou placé dans un foyer d'accueil constitué par une famille protestante, contrairement aux dispositions du présent article, le tribunal doit, sur demande présentée à cet effet par qui que ce soit, rendre une ordonnance aux fins de confier ou de placer l'enfant conformément aux dispositions du paragraphe (1).	

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CONSIDÉRATIONS D'ORDRE RELIGIEUX

TEXTE	NOTES EXPLICATIVES
90. (3) Aucun enfant dont la religion est autre que la religion protestante ou la religion catholique ne sera confié aux soins d'une société protestante d'aide à l'enfance ni aux soins d'une société catholique d'aide à l'enfance ni ne sera placé dans un foyer d'accueil constitué par une famille protestante ou par une famille catholique que s'il n'existe dans la municipalité aucune société d'aide à l'enfance ou aucune famille convenable de la même religion que celle de l'enfant ou de sa famille, et, s'il n'y a aucune société d'aide à l'enfance ou aucune famille convenable de cette religion aux soins desquelles cet enfant puisse être convenablement confié, la disposition à adopter à l'égard de cet enfant est laissée à la discrétion du tribunal.	

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INFRACTIONS À LA CIRCULATION

TEXTE	NOTES EXPLICATIVES
91. (1) Le lieutenant-gouverneur en conseil d'une province peut nommer une ou plusieurs personnes ayant une expérience appropriée et choisies parmi les juges de paix ou les magistrats pour agir soit à plein temps, soit à temps partiel, en tant que fonctionnaires chargés de causes concernant la circulation.	Le Comité a déclaré ceci: "le premier point à faire admettre serait que, lorsque cela est possible, les causes des mineurs concernant la circulation, à l'exception peut-être de celles qui n'ont pas trait à la conduite d'un véhicule devraient être jugées par les tribunaux pour mineurs." Le Comité ajoute que "dans les agglomérations plus importantes, les tribunaux pour enfants devraient pouvoir juger la plupart des contrevenants de la susdite catégorie." Cependant dans la recommandation 14, le Comité déclare que les infractions de routine devraient être traitées, conformément aux règles de la cour, au cours d'audiences distinctes présidées par des fonctionnaires désignés sans recourir aux formalités prévues à cette fin par la présente loi. Sans le dire clairement, les membres du Comité envisagent, semble-t-il, une situation quelque peu analogue à celle qui découle de la Loi de la Californie, savoir, la nomination de fonctionnaires

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INFRACTIONS À LA CIRCULATION

TEXTE	NOTES EXPLICATIVES
91. (1) (Suite)	chargés de connaître des infractions concernant la circulation (California Juvenile Court Law, article 3, paragraphe 561 à 568). Le Comité est d'avis qu'en nommant un fonctionnaire chargé de connaître de ces infractions on libérerait les tribunaux pour mineurs d'une tâche qui les éloigne de ses fonctions essentielles. (Paragraphe 154).

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INFRACTIONS À LA CIRCULATION

TEXTE

92. Un fonctionnaire chargé de l'audition des causes concernant la circulation peut connaître et disposer de toutes causes où un enfant ou un adolescent est accusé d'un acte ou d'une omission, en vertu d'une loi provinciale sur la circulation routière ou d'un règlement municipal sur la circulation, qui constitue une transgression aux termes de la présente loi.

NOTES EXPLICATIVES

La loi dont on propose l'adoption établit une distinction, quant à la gravité, entre les contraventions et les transgressions. Certaines infractions aux lois provinciales de circulation devraient être des contraventions prévues par la présente loi et qui, comme telles, devraient être mentionnées dans une annexe, telle que la négligence au volant, l'obtention d'un permis de conduire alors que le requérant n'y a pas droit, etc. Toutes les autres infractions aux règlements de circulation prévues par les Codes routiers des provinces ou par des règlements municipaux devraient être considérées comme des transgressions aux termes de la présente loi, exemple: stationnement défendu. Seules les transgressions devraient ressortir au fonctionnaire chargé de connaître des infractions aux règlements de circulation.

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INFRACTIONS À LA CIRCULATION

TEXTE	NOTES EXPLICATIVES
93. Toute audition en conformité de l'article 92 doit être tenue selon les dispositions de la législation provinciale en ce qui concerne les dénonciations, les sommations, la mise en accusation, le plaidoyer et la tenue de l'audition en général.	Selon le paragraphe 154 du Rapport, il y aurait lieu de supprimer les formalités lorsqu'il s'agit d'entendre des affaires de pure routine. L'application des dispositions tirées de la législation provinciale, au sujet de la procédure à suivre dans de semblables cas, répondrait à ce désir.

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INFRACTIONS À LA CIRCULATION

TEXTE	NOTES EXPLICATIVES
94. À la suite d'une audition en conformité de l'article 92, lorsque l'enfant ou l'adolescent avoue avoir commis la transgression à la circulation qui lui est reprochée ou lorsqu'il a été constaté que l'enfant ou l'adolescent a en fait commis une transgression à la circulation, le fonctionnaire chargé de l'audition des causes concernant la circulation peut	Voir la note explicative en regard de l'article 61 ainsi que le paragraphe 154 du Rapport.
(a) réprimander l'enfant ou l'adolescent et s'en tenir là;	
(b) ordonner qu'une dénonciation soit déposée comme le prévoit l'article 20; ou	Les faits peuvent révéler que le défendeur devrait être traité comme une personne contrevenant ou comme un transgresseur devant le juge du tribunal pour mineurs, auquel cas l'affaire devrait être déférée à un tribunal pour mineurs.
(c) rendre une ou plusieurs des ordonnances suivantes, selon ce que prévoit la législation provinciale;	
(i) assortir l'usage d'une automobile de restrictions;	Il est à noter que cet alinéa donne à un fonctionnaire chargé de connaître des infractions aux règlements de circulation les pouvoirs qui peuvent être exercés en vertu de la législation provinciale.

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INFRACTIONS À LA CIRCULATION

	TEXTE	NOTES EXPLICATIVES
94. (c)	(Suite)	
(ii)	suspendre ou annuler le permis de conduire;	
(iii)	adjuger des points de démérite;	
(iv)	imposer une amende d'un montant prévu par la loi créant la transgression, mais en aucun cas cette amende ne doit dépasser $25.	

INFRACTIONS À LA CIRCULATION

TEXTE	NOTES EXPLICATIVES
95. (1) Dans les circonscriptions territoriales où il n'a pas été nommé de fonctionnaire chargé de l'audition des causes concernant la circulation, le juge du tribunal pour mineurs, avec l'approbation du procureur général, peut établir une règle du tribunal enjoignant que toutes les causes où un enfant ou un adolescent est accusé d'une transgression à la circulation qui constitue une transgression aux termes de la présente loi, soient entendues par le tribunal ayant juridiction à l'égard des adultes dans des cas semblables, sous réserve des conditions suivantes, (a) que le tribunal ordinaire, avant d'entendre une cause, notifie le fait au tribunal pour mineurs; (b) que le tribunal pour mineurs puisse ordonner qu'une telle cause soit renvoyée devant le tribunal pour mineurs pour toute procédure subséquente.	Cette disposition est une adaptation de la Loi de l'Oregon faite à la suite d'une proposition du Comité (voir les paragraphes 153 et 154). La recommandation 14 souligne que certaines catégories de cas devraient, dans les circonstances appropriées, être déférées aux tribunaux ordinaires. Cette recommandation déroge au principe selon lequel les tribunaux pour mineurs devraient avoir autorité pour connaître des infractions aux règlements de circulation impliquant des adolescents, sauf peut-être les causes qui n'ont pas trait à la conduite d'un véhicule. Selon le Comité, cet écart ne se justifie qu'à l'égard des tribunaux pour mineurs desservant des régions peu peuplées. Les articles 419.533 à 419.541 du chapitre 432 de 1959 des Oregon Revised Statutes constituent selon les mots du Comité, "le modèle le plus utile d'un texte législatif ....

INFRACTIONS À LA CIRCULATION

TEXTE	NOTES EXPLICATIVES
95. (1) (Suite)	définissant de façon générale la compétence d'un tribunal pour mineurs". Ce paragraphe donne au juge d'un tribunal pour mineurs, lorsqu'aucun fonctionnaire chargé de connaître les infractions aux règlements de circulation n'a été nommé, l'autorité, sous réserve de l'approbation du procureur général, de promulguer une règle de cour attribuant aux tribunaux ordinaires la compétence voulue pour juger les causes des enfants et des adolescents ayant commis quelque transgression, c'est-à-dire des cas de routine tels que le stationnement défendu, sans comporter de négligence au volant, ainsi que les causes ayant trait à la conduite de véhicules autres que des véhicules à moteur. Les contraventions relatives aux règlements de circulation continueront d'être entendues par le tribunal pour mineurs. L'objet de ce paragraphe est de maintenir dans des proportions raisonnables le volume de travail confié aux tribunaux pour mineurs dans les

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INFRACTIONS À LA CIRCULATION

TEXTE	NOTES EXPLICATIVES
95. (1) (Suite)	districts où ceux-ci ne sont pas organisés au point d'avoir un fonctionnaire chargé de connaître des infractions aux règlements de circulation, comme c'est le cas des tribunaux pour mineurs dans les régions peu peuplées.

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INFRACTIONS À LA CIRCULATION

TEXTE	NOTES EXPLICATIVES
95. (2) Lorsqu'un enfant ou un adolescent est poursuivi devant un tribunal ordinaire en conformité du présent article, ce tribunal doit procéder en conformité des dispositions de l'article 93 de la présente loi.	
95. (3) Lorsqu'un juge d'un tribunal pour mineurs est aussi un magistrat, rien au présent article n'est censé empêcher ce juge d'agir en tant que juge d'un tribunal ordinaire aux fins du présent article.	Dans les régions à faibles densités démographiques, un magistrat peut également être tenu d'appliquer la Loi sur les jeunes délinquants. Ce paragraphe prévoit que le juge d'un tribunal pour mineurs peut connaître des infractions aux règlements de circulation commises par des mineurs, en sa qualité de magistrat et dispense ainsi des formalités exigées par la présente loi.

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JURIDICTION - ADULTES

TEXTE	NOTES EXPLICATIVES
96. (1) Nonobstant toute disposition du Code criminel ou de toute autre loi du Parlement du Canada, lorsqu'un adulte est accusé, dans une dénonciation, d'une infraction à l'article 157, (157A), 186 ou 231 du Code criminel, (a) à l'égard d'un enfant ou d'un adolescent dont il est le parent ou le tuteur; (b) à l'égard d'un enfant ou d'un adolescent auquel il est apparenté et qui vit dans le même foyer que lui; ou (c) à l'égard d'un membre de sa famille ou de son foyer, et qu'un enfant ou un adolescent de cette famille ou ce foyer en est affecté, cet adulte peut être conduit devant le tribunal pour mineurs pour qu'il soit statué sur son cas comme il est prévu ci-après.	La Loi actuelle sur les jeunes délinquants donne au tribunal pour mineurs la compétence nécessaire pour connaître les infractions suivantes commises par des adultes: (a) en ce qui concerne le procès (i) le fait de contribuer à faire d'un enfant un délinquant (33) (ii) le fait d'induire un enfant à quitter la maison (34) (iii) les infractions qui en vertu du Code criminel devraient être jugées sommairement, lorsqu'elles sont commises à l'égard d'enfants (35(1)); (b) en ce qui concerne l'enquête préliminaire: (iv) les actes criminels prévus par le Code criminel lorsqu'ils sont commis relativement à des enfants (35(1)).

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JURIDICTION- ADULTES

TEXTE	NOTES EXPLICATIVES
96. (Suite) (2) Lorsqu'un adulte comparaît devant le tribunal pour mineurs en conformité du paragraphe (1), le tribunal pour mineurs doit procéder à une instruction sommaire de la dénonciation en conformité des dispositions de la Partie XXIV du Code criminel.	Les paragraphes 361 à 374 inclusivement du rapport traitent de la compétence des tribunaux pour mineurs en ce qui concerne les adultes. La recommandation 89 résume assez bien les vues du comité à cet égard: Recommandation 89 "La législation fédérale se rapportant à la juridiction des cours juvéniles et familiales en matière d'infractions commises par les adultes devrait être modifiée de façon à permettre que certaines infractions de peu de gravité commises par des adultes soient jugées par ces mêmes tribunaux. La législation devrait être modifiée comme il suit:
96. (3) Lorsqu'un adulte est reconnu coupable de l'infraction dont il est accusé, le tribunal pour mineurs peut, compte tenu des circonstances du cas, de l'intérêt de l'enfant ou de l'adolescent en cause et des intérêts de la justice, (a) suspendre le prononcé de la sentence et ordonner que l'accusé soit mis en liberté après avoir contracté un engagement selon la Formule 28 du Code criminel, avec ou sans cautions,	(1) Le tribunal pour mineurs et le tribunal des causes familiales devraient avoir juridiction sur certains délits désignés, commis dans les circonstances suivantes: (a) lorsque la victime du délit est un enfant et qu'il existe des relations permanentes entre

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JURIDICTION - ADULTES

TEXTE	NOTES EXPLICATIVES
96. (Suite)	
(3) (a) (i) de ne pas troubler la paix et d'avoir une bonne conduite pendant toute période durant laquelle il est laissé libre par le tribunal; et	l'enfant et l'adulte accusé;
(ii) de comparaître pour sa sentence lorsqu'on le lui demande pendant la période fixée en vertu du sous-alinéa (i), lorsqu'il n'a pas respecté son engagement; ou	(b) lorsque le délit a été commis par un membre de la famille ou une personne rattachée à la famille, au préjudice d'un autre membre de la famille et que les procédures qui en résultes peuvent avoir des répercussions importantes sur la vie de l'enfant.
(b) imposer à l'accusé la sentence prévue par le Code criminel pour une infraction punissable sur déclaration sommaire de culpabilité.	(2) Le tribunal pour mineurs, ou le tribunal des causes familiales devrait, en autant que possible, avoir pleine et entière juridiction dans les situations ci-haut mentionnées.
	(3) L'accusé devrait avoir le choix d'opter pour un procès devant le tribunal pour mineurs ou des causes familiales ou devant les tribunaux ordinaires de juridiction pénale.. De même, le tribunal pour mineurs

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JURIDICTION - ADULTES

TEXTE	NOTES EXPLICATIVES
96. (Suite)	ou celui des causes familiales devrait avoir le droit de renvoyer la cause devant les tribunaux ordinaires de juridiction pénale.
	(4) On devrait reviser le Code criminel afin de déterminer quels délits pourraient, compte tenu des conditions ci-haut mentionnées, relever de la compétence d'un tribunal pour mineurs ou causes familiales.
	(5) Le tribunal pour mineurs et celui des causes familiales devraient avoir le droit de disposer d'une cause relevant de leur compétence par l'émission d'une ordonnance prévoyant la libération absolue ou conditionnelle de l'accusé, lorsqu'une telle solution pourrait s'avérer appropriée (paragraphe 373)".
	À quelques exceptions près, la législation proposée donnerait suite aux recommandations du comité.

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JURIDICTION - ADULTES

TEXTE	NOTES EXPLICATIVES
96. (Suite)	L'avant-projet reconnaît le principe d'une juridiction sur les adultes restreinte aux causes où des relations de famille ou des relations juridiques existent entre l'adulte accusé et l'enfant ou l'adolescent victime de l'infraction ou qui en subit les conséquences. Il donne également suite à la recommandation préconisant l'abolition de l'infraction de contribution à la délinquance. À cet égard, le rapport n'indique pas clairement si le tribunal pour mineurs devrait conserver sa juridiction sur les adultes accusés d'infractions en vertu du Code, qui équivalent à l'infraction abolie de contribution à la délinquance. Toutefois, il découle logiquement du rapport que les relations permanentes entre l'enfant et l'adulte accusé devraient servir de barème en matière de compétence des tribunaux pour mineurs en ce qui concerne les adultes. La portée de la recommandation au sujet de la compétence des tribunaux pour mineurs de connaître des infractions commises par les adultes, qui impliquent des

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JURIDICTION - ADULTES

TEXTE	NOTES EXPLICATIVES
96. (Suite)	rapports familiaux, a été considérablement restreinte dans la législation proposée. L'avant-projet ne retient que trois infractions, alors que la recommandation en envisageait sept. Voici les infractions visées par l'avant-projet: (1) la corruption d'enfants (voir article 157 lequel, selon le Comité, devrait faire l'objet d'une nouvelle rédaction en vue de le rendre conforme au principe de droit qui exige que les dispositions des lois pénales soient rédigées avec une clarté absolue. Recommandation 88); (2) Le refus de pourvoir (article 186); (3) les voies de fait (article 231). En plus de ce qui précède, le comité a considéré les infractions suivantes: (4) le fait pour un père ou une mère ou un tuteur de causer le défloremement d'une fillette (article 155);

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JURIDICTION - ADULTES

TEXTE	NOTES EXPLICATIVES
96. (Suite)	(5) le fait pour le maître d'une maison de permettre le déflorement (article 156);
	(6) le rapt d'une personne du sexe féminin de moins de seize ans (article 235);
	(7) le rapt d'un enfant de moins de quatorze ans (article 236);
	(8) (article 717)
	Le Comité estime que le tribunal pour mineurs devrait être compétent pour connaître de certaines infractions moins graves et les infractions énumérées ci-dessus en seraient. Il semble impropre de qualifier "d'infractions moins graves" ce qu'on a décrit au paragraphe 5, 6, et 7 ci-dessus. Le Parlement a fait connaître son point de vue sur la gravité de ces infractions en stipulant qu'elles doivent être poursuivies par voie de mise en accusation et punies par des emprisonnements de quatorze ou de cinq ans dans le cas d'une infraction prévue au paragraphe (4), de cinq ans dans le cas des infractions prévues aux paragraphes(5) et (6) et de dix ans dans le cas d'une

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JURIDICTION - ADULTES

TEXTE	NOTES EXPLICATIVES
96. (Suite)	infraction prévue au paragraphe (7). Par contre, on estime que les infractions mentionnées aux paragraphes (1) (2) et (3) peuvent être considérées comme "moins graves", selon les circonstances. L'article 157, dans sa forme actuelle, ne prévoit aucun autre mode de poursuite, mais on estime qu'il devrait en prévoir, étant donné la recommandation du comité préconisant une peine moins sévère et étant donné aussi le fait que ce genre de conduite qu'interdit l'article en question peut être, selon les circonstances, plus ou moins offensant ou mauvais. L'avant-projet ne se préoccupe pas de l'article 717 du Code, puisque le Parlement a déjà adopté une disposition en vertu de laquelle le comportement envisagé par cet article peut être adéquatement traité par le tribunal statuant sur déclaration sommaire de culpabilité. Il semble que le principe fondamental sur lequel se fondent les recommandations du comité soit: les infractions moins graves commises par les adultes et impliquant des rapports

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JURIDICTION - ADULTES

TEXTE	NOTES EXPLICATIVES
96. (Suite)	de famille devraient être traitées d'une manière non punitive. Ce principe est clairement énoncé dans le passage suivant cité par le comité et tiré du mémoire soumis par la Canadian Corrections Association: "Le but.... quand cela semble possible, est de restaurer l'harmonie dans les familles en instruisant l'affaire dans l'ambiance plus favorable du tribunal pour mineurs.... Les provinces qui ont des tribunaux pour les causes familiales prendront sans doute les mesures pour que certaines de ces accusations soient portées devant ces tribunaux". (Paragraphe 367). La législation proposée ne donne pas suite à la recommandation du comité préconisant qu'un défendeur adulte ait le droit de choisir d'être jugé par un tribunal pour adulte, puisque légiférer dans ce sens serait contraire à l'objet même de la disposition en cause qui tend à protéger les intérêts de l'enfant. Il est à noter qu'en vertu de l'article 467 du Code

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JURIDICTION - ADULTES

TEXTE	NOTES EXPLICATIVES
96. (Suite)	criminel un magistrat possède une compétence absolue pour connaître d'un grand nombre d'actes criminels concernant lesquels le défendeur ne peut pas, par conséquent, demander d'être jugé par un jury ou par un tribunal supérieur. Etant donné les motifs mentionnés ci-dessus, l'avant-projet donne au tribunal pour mineurs une juridiction absolue sur les infractions décrites au paragraphe 1. L'adulte accusé de l'une quelconque desdites infractions peut être amené devant le tribunal pour mineurs. Une fois devant ce tribunal, l'accusé peut être jugé de façon sommaire; en d'autres termes, l'infraction dont l'accusé est inculpé devient ipso facto une infraction punissable par déclaration sommaire de culpabilité et doit être traitée conformément aux dispositions de la Partie XXIV du Code criminel. Mais, selon les circonstances de l'espèce révélées par la preuve qu'a soumise la poursuite, - et s'il s'agit d'une infraction punissable par voie de mise en accusation, - le tribunal pour mineurs peut décider de continuer les ....

TEXTE	NOTES EXPLICATIVES
96. (Suite)	procédures comme s'il s'agissait d'une enquête préliminaire, auquel cas l'accusé doit par la suite être mis en accusation devant un tribunal ordinaire. (Voir l'article 98 qui suit). Dans les cas qui intéressent les adultes, le tribunal pour mineurs peut, comme tout autre tribunal, soit déclarer l'accusé coupable ou rejeter les dénonciations. Il n'est par conséquent pas donné suite à la recommandation selon laquelle, "le tribunal pour mineurs devrait avoir le pouvoir de disposer des cas appropriés en prononcant une ordonnance portant libération absolue ou conditionnelle d'un délinquant". Au lieu de cela, on a adopté les dispositions déjà connues du droit pénal relatives au sursis. On croit que la question qui a trait à la disposition des cas sans déclaration véritable de culpabilité devrait, en ce qui concerne les adultes, faire l'objet d'une étude en même temps que le régime général des condamnations.

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JURIDICTION - ADULTES

TEXTE	NOTES EXPLICATIVES

97. (1) Lorsqu'un juge de tribunal pour mineurs suspend le prononcé de la sentence en conformité de l'alinéa (a) du paragraphe (3) de l'article 96, il peut prescrire que l'engagement comporte celles des conditions suivantes qui semblent appropriées à l'espèce:

(a) que l'accusé ne vienne pas au foyer et n'entre pas en rapports avec l'autre conjoint ni avec l'enfant ou l'adolescent;

(b) que l'accusé s'abstienne d'avoir une conduite tendant à faire du foyer un lieu qui n'est pas convenable pour l'enfant ou l'adolescent;

(c) que l'accusé pourvoie aux besoins matériels du foyer;

(d) que l'accusé se présente périodiquement, comme le prescrit le juge, à un agent de surveillance ou à une autre personne désignée par le tribunal, et que l'accusé soit soumis à la surveillance de cette personne.

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JURIDICTION - ADULTES

TEXTE	NOTES EXPLICATIVES
97. (2) Les dispositions de l'article 639 du Code criminel s'appliquent <u>mutatis mutandis</u> à un sursis en conformité de l'alinéa (a) du paragraphe (3) de l'article 96, et du paragraphe (1) du présent article.	

JURIDICTION - ADULTES

TEXTE	NOTES EXPLICATIVES
98. Lorsque, dans un procès en conformité du paragraphe (2) de l'article 96, l'infraction dont le prévenu est accusé est un acte criminel et qu'il apparaît au juge du tribunal pour mineurs que, pour une raison quelconque, l'inculpation devrait être poursuivie sur acte d'accusation, le juge peut, à tout moment avant que le prévenu ait commencé sa défense, décider de ne pas juger et il doit, dès lors, informer le prévenu de sa décision et continuer les procédures à titre d'enquête préliminaire.	Ce texte reproduit l'article 469(1) du Code criminel.

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JURIDICTION - ADULTES

TEXTE	NOTES EXPLICATIVES
99. (1) Les dispositions du Code criminel qui fixent un délai pour entamer des poursuites dans le cas d'infraction au Code criminel s'appliquent à toutes les procédures en vertu des articles de la présente loi qui ont trait aux adultes.	
99. (2) Les dispositions de la Partie XXIV du Code criminel qui ont trait aux appels s'appliquent à toute procédure en vertu de ces articles.	

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ANNEXE "A"

INFRACTIONS AU CODE CRIMINEL

TEXTE	NOTES EXPLICATIVES
Infraction qui consiste à amener ou tenter d'amener un enfant à quitter une institution, etc.	Article 34 de la Loi actuelle sur les jeunes délinquants. Le Comité n'a fait aucune recommandation à l'égard de cette disposition. La disposition en cause n'a pas été reproduite dans le présent avant-projet de loi. De l'avis de ceux qui ont étudié cet avant-projet, l'infraction en cause devrait être soit retenue, soit éliminée, soit prévue par le Code criminel.

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ANNEXE "A"

INFRACTIONS AU CODE CRIMINEL

TEXTE	NOTES EXPLICATIVES
Avant-projet d'une revision de l'article 157 du Code criminel	
157. (1) Est coupable (a) d'un acte criminel et passible d'un emprisonnement de deux ans; ou (b) d'une infraction punissable sur déclaration sommaire de culpabilité quiconque, là où demeure un enfant, participe à un adultère ou, en présence d'un enfant, commet une indécence par ses paroles, ses gestes ou sa conduite, ou se livre à l'ivrognerie habituelle et, par là, met en danger les moeurs de l'enfant.	La disposition relative à cette infraction n'a pas été modifiée en ce sens que quiconque participe à un adultère, là où demeure un enfant, mettant ainsi en danger les moeurs de l'enfant, commet une infraction. Les mots "rend la demeure impropre à la présence de l'enfant" ont été retranchés, puisque, prétend-t-on, ils n'ajoutent rien. Les mots "immoralité sexuelle" ont été remplacés par les mots "indécence par ses paroles, ses gestes ou sa conduite". L'expression "ivrognerie habituelle" a été retenue. Les mots "toute autre forme de vice" ont été retranchés parce qu'ils sont trop vagues. (La recommandation 88 propose que l'article 157 soit modifié en vue d'en limiter la portée et d'alléger la peine qui peut être imposée). Toutes les poursuites rapportées qui ont été intentées sous le régime de l'article 157 actuel ont été

....

ANNEXE "A"

INFRACTIONS AU CODE CRIMINEL

TEXTE	NOTES EXPLICATIVES
157. (1) (Suite)	fondées sur l'adultère ou sur une conduite qu'on peut qualifier d'indécence. En prévoyant les deux modes possibles de procès, on a tenté de donner suite à la recommandation visant l'allégement de la peine.
157. (2) Aucune procédure visant une infraction prévue par le présent article ne doit être intentée après une année à compter du moment où l'infraction a été commise.	Ce paragraphe n'a subi aucune modification.

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ANNEXE "A"

INFRACTIONS AU CODE CRIMINEL

TEXTE	NOTES EXPLICATIVES
157. (3) Aux fins du présent article, "enfant" désigne une personne qui est, ou qui semble être, agée de moins de dix-sept ans;	L'âge a été abaissé de 18 à 17 ans par souci de conformité avec l'âge maximum prévu dans le projet de revision de la Loi sur les jeunes délinquants. Il avait été porté de 16 à 18 ans lors de la revision du Code criminel en 1955.
157. (4) Aucune procédure ne doit être intentée sous le régime du paragraphe (1) sans le consentement du procureur général.	Les mots "à moins qu'elle ne soit intentée par une société reconnue pour la protection de l'enfance, ou par un fonctionnaire d'un tribunal pour enfants" ont été omis afin de permettre une vérification encore plus stricte des poursuites intentées sous le régime de cet article.

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INFRACTIONS AU CODE CRIMINEL

TEXTE	NOTES EXPLICATIVES
PROJET DE CRÉATION D'UNE NOUVELLE INFRACTION:	
157A. (1) Est coupable (a) d'un acte criminel et passible d'un emprisonnement de deux ans; ou (b) d'une infraction punissable sur déclaration sommaire de culpabilité toute personne qui, étant âgée de dix-huit ans ou plus, conseille à un enfant ou à un adolescent de commettre une contravention ou l'aide ou l'encourage à le faire.	L'article 157A du Code criminel remplacerait l'article 33(1) actuel de la Loi sur les jeunes délinquants qui prescrit une peine constituée par une amende maximum de $500 ou par un emprisonnement d'au plus 2 ans ou à la fois l'amende et l'emprisonnement. Selon l'article 33, l'adulte qui contribue à un délit commet une infraction punissable sur déclaration sommaire de culpabilité dont l'instruction ressortit à la fois à un tribunal pour mineurs ou à un magistrat. Selon le texte proposé, les tribunaux criminels ordinaires ont juridiction pour connaître de ce genre d'infraction, sauf lorsque l'infraction a été commise par un parent adulte, auquel cas l'accusé doit être amené devant le tribunal pour mineurs. En de pareilles circonstances, le tribunal pour mineurs pourrait connaître de l'infraction punissable sur déclaration sommaire de culpabilité ou ordonner que l'accusé soit jugé par voie de mise en

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ANNEXE "A"

INFRACTIONS AU CODE CRIMINEL

TEXTE	NOTES EXPLICATIVES
157A. (1) (Suite)	accusation devant les tribunaux ordinaires. Dans la pratique, la suppression de l'article 33 de la Loi sur les jeunes délinquants aurait pour résultat qu'un nombre moins considérable de causes concernant les adultes seraient entendues devant les tribunaux pour mineurs. La critère applicable en l'espèce serait le maintien des rapports entre l'adulte incriminé et l'enfant. Un tel critère permettrait de rechercher avant tout, en statuant sur une cause de ce genre, le bien de l'enfant et non de contrecarrer ce que le tribunal pour mineurs peut tenter d'accomplir pour l'enfant. La plupart des causes rapportées, qui ont été entendues sous le régime de l'article 33, ont trait à des relations sexuelles avec un "enfant". De telles causes ne seraient plus dorénavant entendues par un tribunal pour mineurs.

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ANNEXE "A"

INFRACTIONS AU CODE CRIMINEL

TEXTE	NOTES EXPLICATIVES
157A. (1) (Suite)	Un adulte ne serait poursuivi devant un tribunal pour mineurs que s'il se trouve dans une situation où ses rapports avec l'enfant doivent se poursuivre, c'est-à-dire s'il partage avec l'enfant le même toit et s'il commet une infraction prévue aux articles 157 (corruption d'enfant), 186 (obligation de pourvoir le nécessaire), 231 (voies de fait), ou 157A (le fait d'aider ou d'encourager un enfant à commettre une contravention). Le fait de conseiller, d'aider ou d'encourager un adolescent à commettre une infraction est l'objet d'une mention particulière dans cet article; cette insistance est peut-être superflue étant donné le texte de l'article 21 du Code criminel.
157A. (2) Aux fins du présent article, "contravention" désigne une faute telle quelle est définie dans la Loi sur les enfants et les adolescents et comprend une transgression telle quelle est définie dans cette loi.	

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ANNEXE "B"

AIDE POST-PÉNALE

TEXTE

NOTES EXPLICATIVES

Le Comité a préconisé, dans sa recommandation 26 ainsi que dans le paragraphe 186 de son Rapport, que toute jeune personne, une fois libérée d'une institution, devrait "être soumise à la juridiction du tribunal pour mineurs pendant une période allant jusqu'à deux ans, au cours de laquelle le tribunal pourrait exiger qu'elle observe certaines règles de conduite et qu'elle se présente à l'occasion devant un agent de surveillance ou toute autre personne désignée".

La recommandation 82 et les paragraphes 335 et 336 du Rapport font état de l'aide post-pénale et proposent que la responsabilité à cet égard soit attribuée à l'agent de surveillance; l'aide post-pénale devrait en outre être "assujettie à la direction et au contrôle du tribunal pour mineurs". Cette aide post-pénale, a-t-on également recommandé, devrait être obligatoire. En d'autres termes, le Comité a recommandé que le Parlement fédéral légifère au

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ANNEXE "B"

AIDE POST-PÉNALE

TEXTE	NOTES EXPLICATIVES
	sujet de "l'aide post-pénale". Dans le mémoire présenté par certains juges des tribunaux pour mineurs de la province d'Ontario à la Conférence de Couchiching, on relève en regard de la recommandation 26 la mention suivante: "non approuvée". Au sujet de la recommandation 82, le mémoire déclare ce qui suit: "L'aide post-pénale constitue un besoin urgent tant pour le jeune délinquant que pour les parents. La responsabilité en cette matière devrait incomber aux Services des maisons de correction".
	A l'heure actuelle, l'avant-projet ne renferme aucune disposition concernant le rôle que doit jouer le tribunal pour mineurs dans le domaine de "l'aide post-pénale". Il y aurait lieu d'étudier davantage l'opportunité de légiférer à cet égard et au cas où on estimerait devoir modifier la Loi fédérale en ce sens, de déterminer les aspects particuliers sur lesquels doit porter la nouvelle législation. ....

ANNEXE "C"

COMITÉS DU TRIBUNAL POUR MINEURS

TEXTE	NOTES EXPLICATIVES
	L'article 27 de la Loi actuelle prévoit l'établissement de Comités des tribunaux pour mineurs, dont les fonctions sont énoncées à l'article 28. La recommandation 45 du Rapport propose de supprimer de la Loi fédérale ces dispositions, sauf dans la mesure où elles ont trait à la procédure. La recommandation 44 voudrait qu'on précise davantage le rôle des comités de ce genre, qui ont deux fonctions, savoir: ils servent d'agents de liaison entre le tribunal pour mineurs et la société et ils constituent une sauvegarde. Au paragraphe 232 du Rapport, le Comité a déclaré ce qui suit: "Le rôle de 'chien de garde ou de sentinelle' nous paraît être la fonction propre qu'un Comité de tribunal pour mineurs doit remplir". Au paragraphe 235, le Comité traite de questions qui relèvent strictement de la juridiction fédérale, notamment les questions de procédure, comme "le droit

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ANNEXE "C"

COMITÉS DU TRIBUNAL POUR MINEURS

TEXTE	NOTES EXPLICATIVES
	des membres du Comité d'être présents aux auditions du tribunal pour mineurs". Lors de la Conférence de Couchiching sur la Justice et les adolescents, tenue en avril 1967, le groupe "B" (chargé d'étudier les questions relatives au "tribunal") a étudié la recommandation 44. L'opinion générale semblait d'accord avec le rôle d'agent de liaison que doivent remplir ces comités, mais non avec les fonctions de "chien de garde" qu'on veut leur attribuer. Si les dispositions proposées relatives à l'admission dans les salles d'audience d'un nombre limité de représentants de la presse sont incorporées dans notre législation, le rôle de "sentinelle" n'est plus nécessaire. Les articles 525 et 526 de la California Juvenile Court Law prévoient l'existence des comités des tribunaux pour mineurs de la Californie. Leurs fonctions, qui sont décrites à l'article 529, ressemblent grandement à celles que remplit le grand jury en Ontario; elles comprennent

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ANNEXE "C"

COMITÉS DU TRIBUNAL POUR MINEURS

TEXTE	NOTES EXPLICATIVES
	l'inspection des institutions administrées par l'Etat parmi lesquelles se situent les prisons ou les maisons de détention où sont détenus des adolescents, et la publication de rapports à leur sujet. Le rôle de ces comités consiste généralement à "faire enquête sur l'application de la Loi relative aux tribunaux pour mineurs dans le comté ou la région qu'ils desservent."
	Aux pages 19 et 20 de "An Interim Report and Recommendations on Co-ordination of Government and Community Resources in the TREATMENT OF JUVENILE DELINQUENCY for Rural British Columbia", de C.W. Gorby (1963), il est question de l'utilisation de comités des tribunaux pour mineurs. Le compte rendu dans ce Rapport de l'utilisation de tels comités suggérerait qu'à certaines occasions un juge de tribunal pour mineurs pourrait trouver pratique le droit de constituer et de convoquer un tel comité.

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ANNEXE "C"

COMITÉS DU TRIBUNAL POUR MINEURS

TEXTE

NOTES EXPLICATIVES

Le projet ne comporte aucune disposition au sujet des comités des tribunaux pour mineurs. La mention spéciale faite par le Comité à l'effet que les droits des membres d'un Comité d'un tribunal pour mineurs d'être présents aux auditions du tribunal pour mineurs constitueraient normalement un sujet relevant de la législation fédérale est traitée dans l'article du projet qui s'intitule "auditions", article qui prévoit que "doivent être admises les personnes qui, de l'avis du juge, ont un intérêt direct à l'affaire ou aux travaux du tribunal". En fait, d'après le texte actuel, ce "droit" d'être présent est laissé à la discrétion du juge.

Si l'opinion générale des personnes qui étudient le présent projet est qu'il devrait y avoir une législation fédérale au sujet des comités des tribunaux pour mineurs, il faudra réétudier la question.

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SUPPRESSION DES DÉSIGNATIONS "TRANSGRESSEUR", "ENFANT CONTREVENANT" ET "ADOLESCENT CONTREVENANT"

TEXTE

NOTES EXPLICATIVES

Le présent projet d'étude a suivi les recommandations contenues dans le Rapport à l'effet que la désignation "jeune délinquant" soit remplacée par les désignations "transgresseur", "enfant contrevenant", et "adolescent contrevenant", selon le cas. (Il n'y aurait plus une infraction de délinquance, et un enfant ou un adolescent qui a commis une infraction mineure ou une contravention, selon les définitions de la Loi, serait désigné en conséquence par les expressions "transgresseur", "enfant contrevenant" ou "adolescent contrevenant").

Il apparaît qu'il n'existe aucun motif impérieux de conserver ces désignations, étant donné qu'elles n'ajoutent pas grand chose à la structure de la Loi. Une personne déclarée coupable de vol en vertu du Code criminel n'est pas appelée "voleur" par le Code, et une personne qui est déclarée coupable de viol n'est pas elle non plus appelée "auteur d'un viol", pas plus qu'il n'y a, dans le Code, de désignation générale telles que "contrevenant" ou "criminel". Nous proposons

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SUPPRESSION DES DÉSIGNATIONS "TRANSGRESSEUR" "ENFANT CONTREVENANT" ET "ADOLESCENT CONTREVENANT"

TEXTE

NOTES EXPLICATIVES

que l'on considère la possibilité d'abandonner les désignations "transgresseur", "enfant contrevenant" et "adolescent contrevenant". Au lieu de cela on pourrait faire, là où cela est nécessaire dans la Loi, des distinctions grâce à des expressions comme "un enfant qui a été reconnu comme étant l'auteur d'une "transgression" ou "un adolescent qui a été reconnu comme étant l'auteur d'une contravention", etc. Dans l'ensemble, il semblerait que l'abandon des qualifications ou désignations soit un pas de plus dans la voie de la suppression des termes infamants.

FORMULE 1

(article 9)

Ordonnance de renvoi à un tribunal pour mineurs

CANADA
Province de
(circonscription territoriale)

Attendu que A.B. de
ci-après appelé le défendeur a été amené devant moi sous l'inculpation suivante (énoncer la contravention telle que l'énonce la dénonciation):

Attendu que le défendeur est ou semble être âgé de plus de seize ans et de moins de dix-huit ans;

Et attendu qu'il appert au tribunal que l'intérêt dudit défendeur et celui de la collectivité l'exigent;

À ces causes, je soussigné juge (ou magistrat) de la cour des poursuites sommaires, ordonne que ledit A.B. soit amené devant le tribunal pour mineurs, en conformité de l'article 9 de la Loi sur les enfants et les adolescents.

FAIT et signé par moi ce jour de 19 ,
à

Juge (ou magistrat)
dans et pour

FORMULE 2

(article 20)

Dénonciation

CANADA
Province de
(circonscription territoriale)

Les présentes constituent la dénonciation de C.D., de (Profession ou occupation), ci-après appelé le dénonciateur.

Le dénonciateur déclare que (si le dénonciateur n'a pas eu personnellement connaissance de la contravention ou de la transgression, indiquer qu'il a des motifs raisonnables et probables de croire et qu'il croit qu'elle a été commise), et indiquer la contravention (ou une transgression) aux termes de la Loi sur les enfants et les adolescents.

Le dénonciateur ajoute que ledit A.B. se trouve, ou que l'on croit que ledit A.B. se trouve (ou réside ou que l'on croit qu'il réside) dans la circonscription judiciaire ci-dessus mentionnée.

Assermenté devant moi
ce jour de
en l'an de grâce
à

Signature du dénonciateur

Juge du tribunal pour mineurs
dans et pour

FORMULE 3

(article 21)

Sommation

CANADA
Province de
(Circonscription territoriale)

À: A.B., de (profession ou occupation):

ATTENDU que j'ai reçu ce jour une dénonciation à l'effet que vous, enfant (ou adolescent) aux termes de la Loi sur les enfants et les adolescents, (indiquer l'infraction comme dans la dénonciation).

À ces causes, les présentes vous enjoignent, au nom de Sa Majesté, de comparaître devant moi le jour de , en l'an de grâce 19 , à heures (du matin ou de l'après-midi), au tribunal pour mineurs (indiquer l'adresse du tribunal), pour répondre à ladite dénonciation et être traité selon la loi.

EN OUTRE, je vous fais connaître par les présentes que vous avez le droit d'être représenté et aidé par un avocat de votre choix inscrit au Barreau de cette province.

Fait ce jour de l'an de grâce ,
à

Juge du tribunal pour mineurs
dans et pour

FORMULE 4

(article 22)

Mandat d'arrestation

CANADA
Province de
(circonscription territoriale)

Aux agents de la paix de (circonscription territoriale):

Attendu que j'ai reçu ce jour une dénonciation à l'effet que A.B., enfant (ou adolescent) aux termes de la Loi sur les enfants et les adolescents

(indiquer l'infraction comme dans la dénonciation) commettant de ce fait une contravention (ou une transgression, selon le cas) aux termes de la Loi sur les enfants et les adolescents.

À ces causes, les présentes ont pour objet de vous enjoindre, au nom de Sa Majesté, d'arrêter immédiatement ledit A.B. et de l'amener sur-le-champ devant moi (ou un autre juge de la même circonscription judiciaire) afin qu'il réponde à cette dénonciation et soit traité selon la loi.

Fait ce jour de en l'an de grâce
à

Juge du tribunal pour mineurs
dans et pour

FORMULE 5

(article 23)

Mandat en cas de désobéissance à une sommation ou d'impossibilité de la signifier

CANADA
Province de
(circonscription territoriale)

Aux agents de la paix de (circonscription territoriale):

Attendu que le jour de en l'an de grâce , une dénonciation a été reçue par , juge du tribunal pour mineurs, à l'effet que, dans , de , comté (ou district) de , le jour de , en l'an de grâce , A.B., enfant (ou adolescent) aux termes de la Loi sur les enfants et les adolescents (indiquer l'infraction) commettant de ce fait une contravention (ou une transgression, selon le cas) aux termes de la Loi sur les enfants et les adolescents;

Attendu qu'une sommation a été adressée audit A.B. lui ordonnant, au nom de Sa Majesté, de comparaître le jour de en l'an de grâce , à heures (du matin ou de l'après-midi), à , devant moi pour répondre à ladite inculpation et être traité selon la loi;

Et attendu qu'il appert (* ou **);

À ces causes, les présentes ont pour objet de vous enjoindre, au nom de Sa Majesté, d'arrêter immédiatement ledit A.B. et de l'amener sur-le-champ devant moi, afin qu'il réponde à cette dénonciation et soit traité selon la loi.

Fait jour de en l'an de grâce 19 ,
à

Juge du tribunal pour mineurs
dans et pour

* que ledit A.B. n'a pas comparu aux temps et lieu indiqués dans ladite sommation et qu'il a été prouvé que la sommation lui a été dûment signifiée.

** que ladite sommation ne peut être signifiée audit A.B.

FORMULE 6

(article 25)

Visa du mandat

CANADA
Province de
(circonscription territoriale)

Conformément à la demande qui m'a été soumise ce jour, j'autorise par les présentes l'exécution du présent mandat dans ladite (circonscription judiciaire).

Fait ce jour de en l'an de grâce 19 , à

Juge du tribunal pour mineurs
dans et pour

FORMULE 7

(article 26)

Avis aux parents

CANADA
Province de
(circonscription territoriale)

À C.D. (ajouter autant de noms qu'il est nécessaire en l'occurence) de :

Attendu qu'il a été déclaré devant moi que vous êtes le parent (ou tuteur, selon le cas) (s'il s'agit d'un des deux parents, indiquez lequel) de A.B., enfant (ou adolescent) aux termes de la Loi sur les enfants et les adolescents;

À ces causes, les présentes ont pour objet de vous aviser que *

En outre que ledit A.B. a le droit d'être représenté devant le tribunal par un avocat.

Je vous enjoins par les présentes de comparaître devant moi le jour de , en l'an de grâce 19 , à heures (du matin ou de l'après-midi), à , pour assister à l'audience qui sera tenue en ces temps et lieu au sujet dudit A.B.

Et il vous est par les présentes notifié que le défaut de vous conformer au présent avis peut constituer un outrage au tribunal.

Fait ce jour de , en l'an de grâce ,
à

Juge du tribunal pour mineurs
dans et pour

* Insérer celle des deux mentions suivantes qui s'applique:
(a) une dénonciation a été reçue contre ledit A.B. à l'effet que (indiquer l'infraction) commettant de ce fait une contravention ou une transgression aux termes de la Loi sur les enfants et les adolescents;

(b) ledit A.B. est détenu par ordre du juge soussigné en attendant l'instruction à la suite d'une dénonciation à l'effet que (indiquer l'infraction).

FORMULE 8

(article 27)

Avis à un ami ou un membre de la famille

CANADA
Province de
(circonscription territoriale)

À C.D. de

Attendu qu'il a été déclaré devant moi que vous êtes l'ami (ou un membre de la famille) (s'il s'agit d'un membre de la famille, indiquez la parenté) de A.B. enfant (ou adolescent) aux termes de la Loi sur les enfants et les adolescents;

À ces causes, les présentes ont pour objet de vous aviser que A

Et en outre que ledit A.B. a le droit d'être représenté devant le tribunal par un avocat.

Je vous enjoins par les présentes de comparaître devant moi le , jour de , en l'an de grâce 19 , à heures (du matin ou de l'après-midi), à , pour assister à l'audience qui sera tenue en ces temps et lieu au sujet dudit A.B.

Fait ce jour de , en l'an de grâce 19 , à

Juge du tribunal pour mineurs
dans et pour

A Insérer celle des deux mentions suivantes qui s'applique;

(a) une dénonciation a été reçue contre ledit A.B. à l'effet que (indiquer l'infraction) commettant de ce fait une contravention ou une transgression aux termes de la Loi sur les enfants et les adolescents;

(b) ledit A.B. est détenu par ordre du juge soussigné en attendant l'instruction à la suite d'une dénonciation à l'effet que (indiquer l'infraction).

FORMULE 9

(article 28)

Ordonnance en vue d'un arrangement

CANADA
Province de
(circonscription territoriale)

À G.H., agent de surveillance du tribunal pour mineurs du comté (ou du district) de

Attendu que K.L., ci-après appelé le dénonciateur, a comparu devant moi aux fins de déposer une dénonciation aux termes de la Loi sur les enfants et les adolescents contre A.B., (enfant ou adolescent) aux termes de ladite loi;

Attendu qu'il y a des preuves ou des présomptions permettant de recevoir ladite dénonciation;

Et attendu que, dans l'intérêt de la justice comme dans l'intérêt de A.B., il paraît à propos de s'enquérir de l'opportunité d'un arrangement du cas;

À ces causes, les présentes ont pour objet de vous enjoindre d'avoir un entretien avec le dénonciateur, ledit A.B. et son père ou sa mère ou ses deux parents ou son tuteur, ou d'autres personnes intéressées, en vue de régler le cas sans qu'une dénonciation soit déposée.

Et de vous enjoindre en outre de me soumettre un rapport dans les les deux mois à compter d'aujourd'hui.

Fait ce jour de , en l'an de grâce 19 ,
à

Juge du tribunal pour mineurs
dans et pour

FORMULE 10

(article 40)

Déposition d'un témoin

CANADA
Province de
(circonscription territoriale)

Les présentes sont les dépositions de X.Y., de , et de M.N., de , prises devant moi ce jour de , en l'an de grâce 19 , à , en présence et à portée d'oreille de A.B., ci-après appelé le défendeur, au sujet de qui une dénonciation a été reçue à l'effet que (indiquer l'infraction).

X.Y., ayant été dûment assermenté, dépose ainsi qu'il suit: (insérer la déposition en employant autant que possible les termes mêmes du témoin).

M.N., ayant été dûment assermenté, dépose ainsi qu'il suit:

Je certifie que les dépositions de X.Y. et de M.N., transcrites sur les diverses feuilles de papier ci-annexées, sur lesquelles ma signature est apposée, ont été prises en présence et à portée d'oreille du défendeur (et signées par eux, respectivement, en sa présence).

En foi de quoi, j'ai signé mon nom aux présentes.

Juge du tribunal pour mineurs
dans et pour

FORMULE 11

(article 41)

Mandat de dépôt contre un témoin qui refuse de prêter serment ou de rendre témoignage

CANADA
Province de
(circonscription territoriale)

Aux agents de la paix de (circonscription territoriale):

Attendu que A.B., de , ci-après appelé le défendeur, a été inculpé d'avoir (indiquer l'infraction comme dans la dénonciation);

Et attendu que E.F., de , ci-après appelé le témoin, comparaissant devant moi pour rendre témoignage pour (la poursuite ou la défense) au sujet de l'inculpation contre le prévenu (a refusé de prêter serment ou étant dûment assermenté comme témoin a refusé de répondre à certaines questions concernant l'inculpation qui lui était posées ou a refusé ou négligé de produire les écrits suivants, savoir , ou a refusé de signer sa déposition) après avoir reçu l'ordre de le faire, sans offrir d'excuse valable de ce refus ou de cette négligence;

A ces causes, les présentes ont pour objet de vous enjoindre, au nom de Sa Majesté, d'appréhender le témoin et de le conduire sûrement à la prison, à , et de l'y livrer au gardien de ladite prison avec l'ordre suivant:

Je vous enjoins par les présentes, à vous ledit gardien, de recevoir ledit témoin sous votre garde dans ladite prison et de l'y détenir sûrement pendant l'espace de jours, à moins qu'il ne consente plutôt à faire ce qui est exigé de lui, et, pour ce faire, les présentes vous sont un mandat suffisant.

Fait ce jour de , en l'an de grâce 19 , à

Juge du tribunal pour mineurs
dans et pour

FORMULE 12

(article 42)

Condamnation pour outrage au tribunal

CANADA
Province de
(circonscription territoriale)

Sachez que, le jour de , en l'an de grâce , à , dans la (circonscription territoriale), E.F., de , ci-après appelé le défaillant, est déclaré coupable par moi d'outrage au tribunal pour n'avoir pas comparu devant (indiquez le tribunal) afin de rendre témoignage lors de l'audition d'une inculpation d'avoir (indiquer pleinement l'infraction dont le défendeur a été inculpé), bien qu'il ait été (dûment assigné ou astreint par engagement à comparaître pour rendre témoignage, selon le cas) et n'a pas offert, devant moi, d'excuse suffisante pour son défaut;

En conséquence, je condamne le défaillant, pour ledit défaut, à (indiquer la peine autorisée et déterminée en conformité de l'article 42).

Fait ce jour de , en l'an de grâce , à .

Juge du tribunal pour mineurs
dans et pour

FORMULE 13

(article 42)

Mandat de dépôt pour outrage au tribunal

CANADA
Province de
(circonscription territoriale)

Aux agents de la paix de (circonscription territoriale) et au gardien de la (prison) à

Attendu que E.F. de , ci-après appelé le défaillant, a été le jour de , en l'an de grâce , à , déclaré coupable devant d'outrage au tribunal pour n'avoir pas été présent devant pour rendre témoignage lors de l'audition d'une inculpation d'avoir (indiquer l'infraction comme dans la dénonciation) portée contre A.B., de bien qu'il ait été (dûment assigné ou astreint par engagement à comparaître et à rendre témoignage à cet égard, selon le cas), et n'a pas offert d'excuse suffisante pour son défaut;

Attendu que dans et par ladite déclaration de culpabilité, il a été décidé que le défaillant (indiquer la peine prononcée);

Et attendu que le défaillant n'a pas payé les montants qu'il a été condamné à verser; (retrancher ce paragraphe s'il ne s'applique pas)

À ces causes, les présentes vous enjoignent, au nom de Sa Majesté, d'appréhender le défaillant et de le conduire sûrement à la prison, à , et de l'y remettre au gardien de la prison, avec l'ordre suivant:

Je vous enjoins par les présentes, à vous ledit gardien, de recevoir le défaillant sous votre garde dans ladite prison et de l'y enfermer ✱ et, pour ce faire, les présentes vous sont un mandat.

Fait ce jour de , en l'an de grâce , à .

Juge du tribunal pour mineurs
dans et pour

✱ Insérer celle des mentions suivantes qui s'applique:
(a) pour la période de ,
(b) pour la période de , à moins que lesdits montants et les frais et dépenses de renvoi et de transport du défaillant à ladite prison ne soient plus tôt payés, ou
(c) pour la période de , et pour la période de (indiquer s'il s'agit d'un emprisonnement consécutif), à moins que lesdits montants et les frais et dépenses de renvoi et de transport du défaillant à ladite prison ne soient plus tôt payés.

FORMULE 14

(article 52)

Ordonnance de déssaisissement d'un tribunal pour mineurs en faveur d'un tribunal ordinaire

CANADA
Province de
(circonscription territoriale)

Sachez que, le jour de , en l'an de grâce 19 , A.B., adolescent aux termes de la Loi sur les enfants et les adolescents, a comparu devant moi à la suite de la dénonciation suivante: (indiquer l'infraction comme dans la dénonciation), commettant de ce fait une contravention aux termes de la Loi sur les enfants et les adolescents;

Et attendu que, avant qu'un plaidoyer n'ait été enregistré par moi, *

A ces causes, je soussigné juge du tribunal pour mineurs, ordonne que ledit A.B. soit poursuivi devant le tribunal ordinaire en conformité des dispositions du Code criminel;

Et en outre, je demande que ledit tribunal ordinaire renvoie ledit A.B. devant le tribunal pour mineurs pour disposition, si une déclaration de culpabilité est enregistrée contre ledit A.B. par ledit tribunal ordinaire.

Fait ce jour de , en l'an de grâce 19 , à

Juge du tribunal pour mineurs
dans et pour

* Insérer celle des deux mentions suivantes qui s'applique:
(a) ledit A.B. a demandé à être jugé par le tribunal ordinaire;
(b) le procureur général a demandé que ledit A.B. soit jugé par le tribunal ordinaire;

FORMULE 15

(article 53(1)(a))

Renvoi d'un tribunal pour mineurs à un tribunal ordinaire aux fins de procès et de sentence

CANADA
Province de
(circonscription territoriale)

Attendu que A.B., adolescent aux termes de la Loi sur les enfants et les adolescents, a comparu devant moi à la suite de la dénonciation suivante: (indiquer l'infraction comme dans la dénonciation), commettant de ce fait une contravention aux termes de la Loi sur les enfants et les adolescents;

Attendu que, lors d'une audition aux fins d'une décision sur ladite dénonciation, audition dont avis avait été donné au père (ou à la mère ou au tuteur) dudit A.B., il a été fourni une preuve prima facie que ledit A.B. a commis une contravention aux termes de la Loi sur les enfants et les adolescents:

Et attendu qu'une enquête complète a été effectuée sous ma surveillance au sujet des antécédents dudit A.B. et des circonstances de la contravention;

Je conclus que ledit A.B. ne doit pas être confié à une institution pour débiles mentaux ou malades mentaux;

Je conclus en outre que *

Et attendu que l'intérêt dudit A.B. et celui de la collectivité l'exigent;

A ces causes, j'ordonne que ledit A.B. soit poursuivi devant le tribunal ordinaire en conformité des dispositions du Code criminel.

Fait ce jour de , en l'an de grâce 19 , à .

Juge du tribunal pour mineurs
dans et pour

* Insérer celle des deux mentions suivantes qui s'applique:
(a) le traitement dans l'une des institutions ou l'un des établissements disponibles qui sont affectés au soin et au traitement des adolescents ne convient pas dans le cas dudit A.B.
(b) la sécurité de la collectivité exige que l'adolescent soit privé de sa liberté pendant une période plus longue que je ne serais autorisé à fixer dans le cas d'une décision statuant que ledit A.B. est un adolescent contrevenant.

FORMULE 16

(article 53(1)(b))

Renvoi d'un tribunal pour mineurs à un tribunal ordinaire pour procès seulement

CANADA
Province de
(circonscription territoriale)

Attendu que A.B. adolescent aux termes de la Loi sur les enfants et les adolescents, a comparu devant moi à la suite de la dénonciation suivante: (indiquer l'infraction comme dans la dénonciation), commettant de ce fait une contravention aux termes de la Loi sur les enfants et les adolescents;

Attendu que, lors d'une audition aux fins d'une décision sur ladite dénonciation, audition dont il a été donné avis au père (ou à la mère ou au tuteur) dudit A.B., il a été fourni une preuve prima facie que ledit A.B. a commis une contravention aux termes de la Loi sur les enfants et les adolescents;

Attendu qu'une enquête complète a été effectuée sous ma surveillance au sujet des antécédents dudit A.B. et des circonstances de la contravention;

Je conclus que ledit A.B. ne doit pas être confié à une institution pour débiles mentaux ou malades mentaux;

Et attendu que l'intérêt dudit A.B. et celui de la collectivité l'exigent;

À ces causes, j'ordonne que ledit A.B. soit poursuivi devant un tribunal ordinaire aux fins d'instruction de sa cause en conformité des dispositions du Code criminel.

Et je demande en outre que, si ledit A.B. est reconnu coupable par le tribunal ordinaire de l'infraction ci-dessus mentionnée, il soit renvoyé par ledit tribunal ordinaire devant le tribunal pour mineurs pour disposition.

Fait ce jour de , en l'an de grâce 19 , à .

Juge du tribunal pour mineurs
dans et pour

FORMULE 17

(article 56)

Décision

CANADA
Province de
(circonscription territoriale)

Attendu que le jour de , en l'an de grâce 19 , A.B., enfant (ou adolescent) aux termes de la Loi sur les enfants et les adolescents, a comparu devant moi pour répondre à la dénonciation suivante: (indiquer les allégations contenues dans la dénonciation);

Attendu que ✱

Et attendu que ✱✱

Après avoir considéré la question, à ces causes ✱✱✱

Fait ce jour de , en l'an de grâce 19 ,
à

Juge du tribunal pour mineurs
dans et pour

Insérer celle des mentions suivantes qui s'applique:

✱ (a) ledit A.B. a admis les faits allégués dans la dénonciation
(b) ledit A.B. a nié les fait allégués dans la dénonciation

✱✱ (a) J'ai constaté que l'admission des faits par ledit A.B. avait été corroboré.
(b) J'ai entendu le poursuivant, le défendeur et les témoins,

✱✱✱ (a) Je décide que la dénonciation a été prouvée
(b) Je rejette la dénonciation

FORMULE 18

(article 57(b))

Ordonnance portant décision provisoire

CANADA
Province de
(circonscription territoriale)

Attendu que je soussigné, juge du tribunal pour mineurs, ai décidé qu'avait été prouvée la dénonciation selon laquelle A.B. (indiquer la contravention ou la transgression comme dans la dénonciation);

Et attendu que j'ai entendu les témoignages sur la question de la décision à rendre, et que j'ai examiné le rapport préalable à la disposition concernant ledit A.B.;

À ces causes, j'ajourne l'affaire pour une période qui expirera le jour de , en l'an de grâce 19 ,

Et j'ordonne en outre que ledit A.B. *
1) etc.

Et j'ordonne en outre que ledit A.B. comparaisse devant moi le jour de , en l'an de grâce 19 , aux fins de la décision définitive.

Fait ce jour de , en l'an de grâce 19 , à .

Juge du tribunal pour mineurs
dans et pour

* Inclure une ou plusieurs des conditions énoncées à l'alinéa (b) de l'article 57.

FORMULE 19

(article 57)

Décision définitive

CANADA
Province de
(circonscription territoriale)

Attendu que *

À ces causes, **

Fait ce jour de , en l'an de grâce , à .

Juge du tribunal pour mineurs
dans et pour

* Insérer celle des deux mentions suivantes qui s'applique:
(a) je soussigné, juge du tribunal pour mineurs, ai décidé qu'avait été prouvée la dénonciation selon laquelle A.B. (indiquer la contravention ou la transgression comme dans la dénonciation), et attendu que j'ai entendu les témoignages sur la question de la décision à rendre et que j'ai examiné le rapport préalable à la disposition concernant ledit A.B.;
(b) je soussigné, juge du tribunal pour mineurs, après avoir décidé qu'avait été prouvée la dénonciation selon laquelle A.B. (indiquer la dénonciation), et après avoir ajourné l'affaire et examiné le comportement dudit A.B. par la suite;

** Insérer celle des mentions suivantes qui s'applique:
(a) je conclus que ledit A.B., ayant comparu devant moi, ne commettra vraisemblablement pas d'autres contraventions ou transgressions et à ces causes, j'acquitte absolument ledit A.B.
(b) je conclus que la preuve fournit de bonnes raisons de croire que ledit A.B. est un enfant (ou un adolescent) qui a besoin de soins ou de surveillance, du fait que (indiquer les raisons), et à ces causes, je rejette la dénonciation et j'ordonne que ledit A.B. soit poursuivi en vertu de la législation provinciale à ce sujet.
(c) Je décide que ledit A.B. est (selon le cas)
(i) un enfant contrevenant
(ii) un adolescent contrevenant
(iii) un transgresseur

FORMULE 20

(articles 58, 59, 60 et 61)

Ordonnance de disposition

CANADA
Province de
(circonscription territoriale)

Attendu que A.B., enfant (ou adolescent) aux termes de la Loi sur les enfants et les adolescents a fait le jour de , en l'an de grâce 19 , l'objet d'une décision déclarant qu'il est un (adolescent contrevenant, enfant contrevenant ou transgresseur, selon le cas);

Et attendu que j'ai entendu les témoignages sur la question;

À ces causes, j'ordonne la disposition suivante: (indiquer la disposition comme prévue aux articles 58, 59, 60 ou 61 de la Loi sur les enfants et les adolescents, selon le cas).

Fait ce jour de , en l'an de grâce 19 , à .

Juge du tribunal pour mineurs
dans et pour

FORMULE 21

(article 62)

Ordonnance de mise en liberté surveillée

CANADA
Province de
(circonscription territoriale)

Attendu que A.B., enfant (ou adolescent) aux termes de la Loi sur les enfants et les adolescents, a comparu devant moi à la suite de la dénonciation suivante: (indiquer l'infraction comme dans la dénonciation), commettant de ce fait une contravention aux termes de la Loi sur les enfants et les adolescents;

Et attendu que je soussigné, juge du tribunal pour mineurs, le jour de , en l'an de grâce 19 , ayant décidé que la dénonciation avait été prouvée, *

Et attendu que ledit A.B. réside (ou résidera prochainement dans la de , qui constitue la circonscription territoriale de)

A ces causes, j'ordonne que ledit A.B. soit placé sous la surveillance de E.F., agent de surveillance de la municipalité de (ou G.H., de la municipalité de , personne désignée par moi comme étant appropriée pour la surveillance dudit A.B.), ci-après appelé l'agent de surveillance, à compter de la date de la présente ordonnance jusqu'au jour de , en l'an de grâce 19 , (période ne dépassant pas deux ans).

J'ordonne en outre que ledit A.B. se conforme aux règles suivantes:

1. Il doit avoir une bonne conduite;

2. Il doit comparaître devant moi sur demande afin que je puisse modifier les termes de la présente ordonnance;

3. Il doit se présenter en personne à l'agent de surveillance au moins par mois, à la date et au lieu indiqués par l'agent de surveillance, et en outre les autres fois où il en sera spécialement requis par l'agent de surveillance;

4. Il doit (insérer les autres conditions que le juge considère souhaitables, en conformité de l'article 62(1)(g) de la Loi; par exemple:

....

* Insérer celle des deux mentions suivantes qui s'applique:
(a) ai décidé que ledit A.B. est

(selon le cas)

(i) un transgresseur
(ii) un enfant contrevenant
(iii) un adolescent contrevenant

(b) ai ajourné l'affaire jusqu'au jour de , en l'an de grâce 19 .

FORMULE 21 (Suite)

(a) Il doit rendre en numéraire à I.J. (etc.), personne (ou personnes) à qui la contravention a été dommageable, les sommes suivantes:

Nom et adresse.....Montant.....
à payer dans les mois, et payable au greffier de ce tribunal, case postale 00 ;

(b) Il doit fréquenter l'école régulièrement et se soumettre à la discipline de l'école, et ne pas quitter l'école sans la permission écrite de l'agent de surveillance;

(c) Il doit travailler régulièrement ou chercher diligemment un emploi et ne quitter aucun emploi sans motifs valables et suffisants;

(d) Il doit être de retour dans son foyer au plus tard à heures de l'après-midi du dimanche au jeudi, et à heures de l'après-midi, le vendredi et le samedi, à moins qu'il ne soit accompagné par son père ou sa mère ou son tuteur, ou qu'il n'ait la permission écrite de l'agent de surveillance;

(e) Il doit immédiatement informer l'agent de surveillance de tout changement ou projet de changement d'adresse et ne pas déménager de sa résidence sans la permission expresse de l'agent de surveillance;

(f) Il ne doit pas fréquenter les personnes désignées par le tribunal).

Et il est, par les présentes, donné avis que, si ledit A.B. ne respecte pas les conditions ci-dessus, il peut être ramené devant le tribunal pour être traité comme le décidera le tribunal, en conformité de l'article 65 de la Loi sur les enfants et les adolescents.

Fait ce jour de , en l'an de grâce 19 , à .

Juge du tribunal pour mineurs
dans et pour

Les modalités de la présente ordonnance m'ont été expliquées et je les comprend très bien.

Témoin

Signature A.B.

Fait et signé devant moi
le jour de ,
en l'an de grâce 19 , au
de ,
dans la de .

Juge

FORMULE 22

(article 64)

Ordonnance de libération

CANADA
Province de
(circonscription territoriale)

Attendu que je soussigné, juge du tribunal pour mineurs, ai décidé, le jour de , en l'an de grâce 19 , que A.B., enfant (ou adolescent) aux termes de la Loi sur les enfants et les adolescents, est un (adolescent contrevenant, un enfant contrevenant ou un transgresseur), en conformité de ladite loi;

Et attendu que je conclus que la surveillance du tribunal pour mineurs n'est plus nécessaire audit A.B.;

À ces causes, je libère ledit A.B. de la surveillance du tribunal.

Fait ce jour de , en l'an de grâce 19 , à .

Juge du tribunal pour mineurs
dans et pour

(Filed Separately)

CONFIDENTIAL Extra Copy

FIRST DISCUSSION DRAFT

AN ACT RESPECTING CHILDREN AND YOUNG PERSONS

Department of the Solicitor General

Ottawa

September, 1967

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PROPERTY OF
PRIVY COUNCIL OFFICE
REGISTRY
Cet ouvrage appartient
à la section de classement du
BUREAU DU CONSEIL PRIVÉ

....

FIRST DISCUSSION DRAFT

AN ACT RESPECTING CHILDREN AND YOUNG PERSONS

TITLE

TEXT	EXPLANATORY NOTES
1. This Act may be cited as the Children and Young Persons Act.	Recommendation 6 states that "The title of the 'Juvenile Delinquents Act' should be changed to 'Children and Young Persons Act'". This change of terminology, in the view of the Committee, represents an attempt to eliminate the stigma that attached to the expression "Juvenile Delinquents". (See paragraph 88 of the Report) NOTE: Throughout these notes, the "Report" referred to is The Report of the Department of Justice Committee on Juvenile Delinquency (1965). The "Committee" referred to is the Department of Justice Committee. The "recommendations" referred to are those contained in paragraph 435 of the Report (See ch. XIV, at page 283 et seq.) The "paragraphs" referred to are paragraphs in the Report.
2. In this Act,	

....

INTERPRETATION

TEXT	EXPLANATORY NOTES
(1) "adjudication" means any finding of a Juvenile Court concerning whether an information has been proved or whether a child or young person, as the case may be, is or is not a child offender, a young offender or a violator, and includes an order made pursuant to section 56.	
(2) "adjudicatory hearing" means any hearing to determine whether the allegations of an information are supported by (a preponderance of) evidence and whether a child or young person should be adjudged to be, as the case may be, a child offender, a young offender, or a violator.	
(3) "adult" means a person who is seventeen years of age or more.	
(4) "child" means any boy or girl who is ten (or twelve) years of age or more and is under the age of fourteen.	The Report stated that the minimum age should be specified as 10 or, at most, 12, with the possibility of a flexible or variable minimum age. It was recommended that this minimum age be the subject of discussion between federal and provincial governments.

...

INTERPRETATION

TEXT	EXPLANATORY NOTES
(4) (Cont'd)	(See recommendation 7, and also paragraphs 111, 114 and 116). This section, as drafted, does not provide for flexibility, because the recommendation for a uniform minimum age of responsibility and that for a variable minimum age are in conflict. This recommendation concerns the minimum age of criminal responsibility; it implies that section 12 of the Criminal Code would have to be amended. If it is not amended to conform with the above minimum age, it would operate to the effect that children between the ages of 7 and the new minimum age (10 or 12) would be subject to the full rigors of the adult courts. This cannot be the intention of the Committee, and, consequently, section 12 of the Criminal Code would require an amendment raising the age of criminal responsibility to whatever minimum age is adopted by this section. In relation to the same problem, recommendation 8 of the Report recommends that section 13 of the Criminal Code should be abolished.

....

INTERPRETATION

TEXT	EXPLANATORY NOTES
(4) (Cont'd)	That section provides that "No person shall be convicted of an offence in respect of an act or omission on his part while he was seven years of age or more, but under the age of fourteen years, unless he was competent to know the nature and consequences of his conduct and to appreciate that it was wrong." Raising the age of criminal responsibility to the same level in both the Criminal Code and the revised Act, and making the new Act applicable throughout Canada would have the effect of bringing all juveniles, proceeded against for offences, into the juvenile courts. This in turn raises the question as to whether section 13 of the Criminal Code would any longer be necessary. The Committee recommended its repeal.
(5) "child offender" means a child who commits an offence.	See comments below concerning the "young offender". The "child offender" would be treated slightly differently from the "young offender"; for instance, he would not be subject to having his case waived to the ordinary criminal courts, and he would be subject to a less severe disposition, as in the case of fines. (See Paragraph 150).

...

INTERPRETATION

TEXT	EXPLANATORY NOTES
(6) "court of appeal" means	In recommendation 60, concerning the right of appeal, the Committee states that "the accused should have a direct right of appeal to the court of appeal." Present section 37 provides that the appeal shall be to a Supreme Court Judge, with a further appeal to the Court of Appeal. In para. 275 of their report, the members of the Committee do not define "Court of Appeal". This section adopts the definition that is given by the Criminal Code, section 2 (9), in view of the following comment made by the Committee: "Adoption of the scheme we propose would permit important questions of law to be decided by the one tribunal whose pronouncements apply throughout the Province". The court of appeal as defined by the Criminal Code is that tribunal.
(a) in the Province of Ontario, the Court of Appeal;	
(b) in the Province of Quebec, the Court of Queen's Bench, appeal side;	
(c) in the Province of Nova Scotia, the Appeal Division of the Supreme Court;	

...

INTERPRETATION

TEXT

EXPLANATORY NOTES

(6) (Cont'd)

(d) in the Province of New Brunswick, the Court of Appeal, otherwise known as the Appeal Division of the Supreme Court;

(e) in the Province of British Columbia, the Court of Appeal;

(f) in the Province of Prince Edward Island, the Supreme Court;

(g) in the Province of Manitoba, the Court of Appeal;

(h) in the Province of Saskatchewan, the Court of Appeal;

(i) in the Province of Alberta, the Appellate Division of the Supreme Court;

(j) in the Province of Newfoundland, the Supreme Court, constituted by two or more of the judges thereof;

(k) in the Yukon Territory, the Court of Appeal; and

(l) in the Northwest Territories, the Court of Appeal.

....

INTERPRETATION

TEXT	EXPLANATORY NOTES
(7) "defendant" means any child or young person or adult against whom proceedings are instituted under this Act.	
(8) "disposition" means any order concerning a child or young person, as the case may be, adjudged to be a child offender, a young offender or a violator, pursuant to paragraph (d) of section 57.	
(9) "a judge" or "the judge" or "juvenile court judge" means a judge of a juvenile court.	
(10) "juvenile court" means any court duly established under any provincial statute for the purpose of dealing with children and young persons under this Act, or specially authorized by provincial statute, the Governor-in-Council, or the Lieutenant-Governor in Council to deal with children and young persons under this act.	Adapted from present section 2(b) of the Juvenile Delinquents Act.
(11) "municipality" includes the corporation of a city, town, village, county, township, parish or other territorial or local division of a province, the inhabitants of which are incorporated or are entitled to hold property collectively for a public purpose.	Copied from section 2(26) of the Criminal Code.

INTERPRETATION

TEXT	EXPLANATORY NOTES
(12) "offence" means any act of commission or omission contrary to the Criminal Code or to any statute or to any provision of any statute of the Parliament of Canada or of the Legislature of a Province named in the Schedule, which Schedule may be amended from time to time by proclamation of the Governor-in-Council (a) by adding thereto any statute or any provision of any statute of the Parliament of Canada or of the Legislature of a Province, or (b) by deleting therefrom any statute or any provision of any statute of the Parliament of Canada or of the Legislature of a Province.	The Report recommended the abolition of the offence of delinquency, set out in section 3(1) of the present Act. (See recommendation 11, and also paragraph 146). The Report recommended distinguishing between offences of greater and lesser degrees. An offence constituting a violation of the Criminal Code or "provisions of other federal or provincial statutes as are from time to time designated by the Governor-in-Council" would be considered to be an offence of greater degree. (See recommendation 12, and also paragraph 149). Section 28(5) of the new Interpretation Act was looked at in drafting this definition. By section 28(29) of the new Interpretation Act, "province" includes the Yukon Territory and the Northwest Territories. By section 28(18) of the new Interpretation Act, "legislature" includes the Lieutenant-Governor-in-Council and the Legislative Assembly of the Northwest Territories, the Commissioner in Council of the Yukon Territory and the Commissioner in Council of the Northwest Territories.

....

INTERPRETATION

TEXT	EXPLANATORY NOTES
(13) "probation officer" means any probation officer duly appointed under the provisions of any provincial statute or of this Act.	Present section 2(1)(j) of the Juvenile Delinquents Act.
(14) "prosecutor" means the Attorney General or, where the Attorney General does not intervene, the person who institutes proceedings to which this Act applies, and includes counsel acting on behalf of either of them.	The Committee recommended that a Crown Attorney be in attendance in proceedings in the juvenile court. There was no specific recommendation that he conduct the proceedings. (Recommendation 49). This definition taken from section 2(33) of the Criminal Code indicates that the prosecution should ordinarily be conducted by counsel acting on behalf of the Attorney General; the informant or his counsel may act in default of the Attorney General's intervention.
(15) "territorial division" includes any province, county, union of counties, township, city, town, parish or other judicial division or place to which the context applies.	This definition has been copied from Section 2(39) of the Criminal Code.

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INTERPRETATION

TEXT	EXPLANATORY NOTES
(16) "training school" means any reformative institution for children or young persons duly approved by provincial statute or by the Lieutenant Governor-in-Council in any province, and includes such an institution in a province other than that in which the committal is made, when such institution is otherwise available.	Recommendation 75: "The expression 'industrial school' should be replaced by the term 'training school'". (See also paragraph 312).
(17) "young offender" means a young person who commits an offence.	The Report indicated that a distinction should be made between "offenders" on the basis of age. The "young offender" could then be subject to treatment somewhat different from that accorded to the "child offender". This would be apparent in the disposition provisions, and in the waiver of jurisdiction provisions, for example. (See paragraph 150).
(18) "young person" means any boy or girl who is fourteen years of age or more and is under the age of seventeen.	The Report stated that the maximum age should be uniform throughout Canada and should be set at 17. 17 year olds would not, therefore, ordinarily come under the jurisdiction of the Act. (See recommendation 9, and also paragraphs 132 and 136 of the Report)

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INTERPRETATION

TEXT	EXPLANATORY NOTES
(19) "violation" means any act of commission or omission contrary to any statute of the Parliament of Canada or of the Legislature of a Province that is not included in the Schedule, or of any by-law of any municipality, or any regulation or ordinance.	As noted above, the Report recommended distinguishing between offences of greater and lesser degrees. An offence other than one as described above (under the definition of offence) would be considered an offence of lesser degree. This would include any other offence, "whether against a federal or provincial statute, a municipal by-law, or a regulation or ordinance". (See recommendation 12, and also paragraph 149).

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INTERPRETATION

TEXT	EXPLANATORY NOTES
(20) "violator" means a young person or a child who commits a violation.	A "violator" would have committed an offence of a lesser degree, and would not be subject to all the means of disposition to which an "offender" would be subject. (See recommendation 12, and also paragraph 149). The Report made no mention of distinguishing between "violators" on an age basis. Presumably it was thought that there was no need to distinguish between "violators" under the age of 14, and those over the age of 14. The Report did not speak of, or recommend, the term "violator"; it simply referred to the term "violation". The term "violator" is being used with some misgiving, and will be replaced if and when a more appropriate term can be found.

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APPLICATION

TEXT	EXPLANATORY NOTES
3. (1) Every child or young person commits an offence who commits an act contrary to the provisions of the Criminal Code or to the provisions of any statute set out in the Schedule.	See the notes opposite Section 2(12)
(2) Every child or young person commits a violation who commits an act contrary to any statute of the Parliament of Canada or of the Legislature of a Province that is not included in the schedule, or to any by-law of any municipality, or to any regulation or ordinance.	See the notes opposite section 2(19)
(3) Every child or young person who commits an offence or a violation shall be dealt with as hereinafter provided.	

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PHILOSOPHY

TEXT	EXPLANATORY NOTES
4. Where a child or young person has been adjudged a violator, a child offender, or a young offender, as the case may be, he shall be dealt with not in a punitive manner, but as a child or young person requiring help and guidance and proper supervision.	This provision has been adapted from section 3(2) of the present Juvenile Delinquents Act, which reads: "Where a child is adjudged to have committed a delinquency he shall be dealt with, not as an offender, but as one in a condition of delinquency and therefore requiring help and guidance and proper supervision." The gist of this section is very much that of the one that follows, and may be redundant.

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CONSTRUCTION

TEXT	EXPLANATORY NOTES
5. (1) This Act shall be liberally construed to the end that its purpose may be carried out, namely, that the care and custody and discipline of a child or young person adjudged to be a violator, a child offender or a young offender shall approximate as nearly as may be that which should be given by its parents, and that, as far as practicable, every such child or young person shall be treated not as a criminal, but as a misdirected and misguided child, and one needing aid, encouragement, help and assistance.	This provision is a slight modification of section 38 of the present Juvenile Delinquents Act, which is: "This Act shall be liberally construed to the end that its purpose may be carried out, namely, that the care and custody and discipline, of a juvenile delinquent shall approximate as nearly as may be that which should be given by its parents, and that as far as practicable every juvenile delinquent shall be treated, not as a criminal, but as a misdirected and misguided child, and one needing aid, encouragement, help and assistance. 1929, c.46, s. 38." It is implied in the Report that this section should be retained. In paragraph 191, the Committee stated: "We agree with the philosophy expressed in section 38 of the Act. The difficulty has not been in the basic philosophy of the Act but in the failure of society to give to the juvenile court adequate resources with which to fulfill the aims of that philosophy."
(2) Where the provisions of this Act are inconsistent with the provisions of any other Act of the Parliament of Canada, the provisions of this Act shall prevail.	

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LIMITATION PERIOD

TEXT	EXPLANATORY NOTES
6. (1) No general provisions providing a time limit for making a complaint or laying an information in respect of offences punishable on summary conviction shall apply to any proceedings under this Act against a child or young person.	Present section 5(1) of the Juvenile Delinquents Act re-drafted. The Committee made no recommendation on this point. The time limit concerning the proceedings against adults will be dealt with in the Part of the Act concerning adults.
(2) The provisions of the Criminal Code prescribing a time limit for the commencement of prosecution for indictable offences apply, mutatis mutandis, to proceedings under this Act.	Present section 5(2) of the Juvenile Delinquents Act. The relevant offences are: 157 corrupting children 184 procuring 156 householder permitting defilement 155 parent or guardian procuring defilement 145 (1)(b) illicit sexual intercourse with female employee 144 seduction under promise of marriage.

JURISDICTION

TEXT	EXPLANATORY NOTES
GENERAL	
7. (1) Subject to sections 52 and 53, a court or judge has exclusive jurisdiction in proceedings concerning any offence or violation alleged to have been committed by any child or young person, including cases where, after the alleged offence or violation was committed, the young person has passed the age of 17 years.	This section is intended to cover the subject matter of section 4 in the present Juvenile Delinquents Act. Examples of similar provisions in American Statutes are: Standard Juvenile Court Act (model Act) section 8; Oregon 419.476.
(2) Notwithstanding any provision in this Act, the juvenile court has no jurisdiction over any person 21 years of age or more, and has no jurisdiction to make an order affecting any person beyond his twenty-first birthday.	The last part of this provision is in accordance with recommendation 27 and paragraph 186 of the Report. Recommendation 27 states: "In no case should the juvenile court have the power to make an order affecting a young person beyond his twenty-first birthday."
VENUE	
8. Except where otherwise provided in this Act, the venue for proceedings under this Act shall be in the court having territorial jurisdiction where the child or young person is found, or his place of residence, or where the alleged offence or violation occurred.	There is no provision concerning venue in the present Juvenile Delinquents Act. There are sections similar to this in the American legislation examined: for example, Minnesota 260.121; Illinois 2-6(1). Section 414(a) of the Criminal Code was looked at in drafting this section.

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JURISDICTION

TEXT	EXPLANATORY NOTES
WAIVER TO JUVENILE COURT FROM A SUMMARY CONVICTION COURT	
9. Where a person who is over the age of sixteen years but under the age of eighteen years is before a summary conviction court pursuant to Part XXIV of the Criminal Code, such court may, on its own motion, or on application by the Crown, at any time before sentence, order such person to be taken before the juvenile court, if it appears to such court that, having regard to the character of the person and the circumstances surrounding the commission of the offence, such order is for the good of the person and the interest of the community.	This section is intended to implement recommendation 22. It contemplates a referral from an ordinary court to a juvenile court in cases where young adults slightly over the age limit (seventeen years of age) are charged with "less serious offences". Recommendation 22 refers to "appropriate cases" without suggesting any criterion. Actually, the recommendation is to adopt "some such procedure as a means of achieving more flexibility in dealing with offenders who are only slightly over the juvenile age otherwise provided by law." Paragraph 179 of the Report notes two recommendations: 1) "that legal provision should be made to permit the judge or magistrate who is trying an offender between the ages of sixteen and eighteen, if he considers the accused to be a young person who might to his advantage be dealt with in the juvenile court, to deal with him according to the powers conferred under the provisions of the Juvenile Delinquents Act". (The Archambault Commission 1938).

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JURISDICTION

TEXT

9. (Cont'd)

EXPLANATORY NOTES

2) "that a magistrate be given the power to remit a case to the juvenile court where the offence falls within a class consisting of certain less serious offences and where the accused has no previous convictions, and further, that the magistrate be empowered, in his discretion, to remit the case only on application by the Crown which application must be made after arraignment and before plea".

(Ontario Magistrates' Association, 1962)

The Committee did not indicate which of the approaches it favoured, stating as follows:

"We content ourselves with recommending that the proposals of the Archambault Commission and of the Ontario Magistrates' Association Committee be studied with a view to adopting one, or perhaps even both, as a means of securing more flexibility in dealing with offenders of the age of seventeen - that is, those who are the one year older than our proposed juvenile age."

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JURISDICTION

TEXT	EXPLANATORY NOTES
9. (Cont'd)	It is quite difficult to define what is per se, a "less serious offence". The criminal law distinguishes between indictable and summary conviction offences. This distinction indicates, for all practical purposes, the appreciation of Parliament of the gravity of an offence. It is felt that the offences that are punishable on summary conviction are the less serious offences referred to by the Ontario Magistrates. However, there are offences in the Criminal Code and other federal statutes that can be tried on indictment or on summary conviction. In such cases, the Crown, in its discretion, decides how the accused is to be prosecuted. The election as to the procedure applicable depends in practice on the circumstances of the offence. This section adopts the criterion of indictable versus summary conviction offences. The referral from the ordinary court to the juvenile court would apply only if the alleged offence may be punishable on summary conviction.

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JURISDICTION

TEXT	EXPLANATORY NOTES
9. (Cont'd)	The offences are:
	S. 54 assisting deserter
	56 resisting execution of process
	57 offences to R.C.M.P.
	67 unlawful assembly
	81 prize fight
	84 concealed weapon
	85(2) possession of silencers for firearms
	86 pointing firearm
	87 offensive weapon at public meeting
	88(2)(3)-89-90-91 firearms
	111 personating peace officer
	123 advertising reward
	158 indecent acts
	159 nudity
	160 causing disturbance
	161(2)(3) disturbing religious worship
	162 trespassing at night
	163 offensive volatile substance
	164 vagrancy
	175 obstructing executing of warrant
	176(2) found in
	183 transporting to bawdy-houses
	213 attempt to commit suicide
	226 smoke screen on vehicle
	239(1) venereal disease
	307 fraudulently obtaining food and lodging
	308 witchcraft
	315(2) indecent phone calls

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JURISDICTION

TEXT	EXPLANATORY NOTES
9. (Cont'd)	341 false employment record
	344 false billing
	347 personation at examination
	356 falsely claiming royal warrant
	362 unlawful use of military uniforms
	366 intimidation
	367 employer refusing to employ member of union
	369 issuing trade stamps
	373 mischief where damage not over $50.00
	378 false firealarm
	379(2) interfering with saving of wreck
	380(1) interfering with marine signal
	383 interfering with boundary lines
	386 cruelty to animals
	387 cruelty to animals
	388 keeping cock-pit
	389 transportation of cattle
	390(2) obstructing search of vessel
	397 fraudulent use of slugs
	399 defacing current coin
	400(2) printing likeness of bank-note
	Some offences may be prosecuted either by indictment or summary conviction.
	These offences are:
	154 obscenity
	186(3) non-support
	221(1) criminal negligence

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JURISDICTION

TEXT	EXPLANATORY NOTES
9. (Cont'd)	221(2) hit and run 221(4) dangerous driving 222 driving while intoxicated 223 impaired driving 225(3) driving while disqualified 226A dangerous operation of vessels 231(1) common assault 360(2) transactions public stores 316(1)(b)(c) threats 350 to 354 incl. trade mark offence 358 secreting wreck 363 military stores 365 breach of contract In such cases, it is incumbent upon the prosecutor to determine whether the offence shall be prosecuted by way of indictment or by way of summary conviction. Where the Crown does not determine the applicable mode of prosecution, the magistrate does. In these offences, the Crown would thus have a discretion whereby it could prevent the young adult from being referred to the juvenile court by merely choosing to prosecute him by way of indictment. Where the Crown elects to proceed by way of summary conviction or where the offence is only a summary conviction offence, the referral is up to the summary conviction court, either proprio motu or on application by the Crown. ....

JURISDICTION

TEXT

9. (Cont'd)

EXPLANATORY NOTES

The proposed section gives the summary conviction court the power to make an order of referral at any time before sentence. This provision is at variance with the proposal of the Ontario Magistrates Association. It is thought that the summary conviction court should be given the opportunity to make such order with full knowledge of the circumstances of the case. Under this provision, the summary conviction court may have commenced trial and realize sometime during the trial that the case is fit for a juvenile court. It would then, considering the good of the child and the interest of the community, be in a position to make such order. This provision is in accordance with the proposal of the Archambault Commission.

It is to be noted that this section does not comply with the Ontario Magistrates' recommendation in two other respects.

(1) The discretionary power of the court is not restricted to an application by the Crown. Indeed, the Crown may, as noted above, exercise its discretion and proceed by indictment, where there is an alternative mode of trial for the offences listed above. ....

JURISDICTION

TEXT

9. (Cont'd)

EXPLANATORY NOTES

(2) There is no direction concerning the absence of previous convictions. Such a direction exists in present section 638 of the Criminal Code. It has been so much criticized that its repeal is now under consideration. Furthermore, it would appear that the inquiry that the summary conviction court may conduct as to the character of the accused should inform him as to the advisability of a referral order.

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TEXT	JURISDICTION	EXPLANATORY NOTES
SECTION 421(3) OF THE CRIMINAL CODE		
10. (1) Where the judge has adjudged the information to have been proved against a child or young person and such child or young person signifies in writing before the judge his intention to admit the facts concerning an offence or violation that he is alleged to have committed in Canada outside the province in which he is brought before that judge, if the offence is not an offence mentioned in sub-section (2) of section 413 of the Criminal Code, and the Attorney General or Deputy Attorney General of the province where the offence or violation is alleged to have been committed consents, the judge has jurisdiction to make an adjudication with respect to the alleged offence or violation, and to make any disposition provided for in this Act that he deems appropriate.		This sub-section is adapted from section 421(3) of the Criminal Code. Recommendation 68 of the Report states that the principle of section 421 of the Criminal Code should apply in relation to juveniles. See also paragraph 293 of the Report. The offence or violation referred to could be an offence or violation against a provincial statute. The effect of this provision would be that a court in one province would have jurisdiction to make an adjudication concerning an offence or violation against a statute of another province. Of course there would be no such jurisdiction without the consent of the Attorney General or Deputy Attorney General of the other province.

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JURISDICTION

TEXT	EXPLANATORY NOTES
SECTION 421 A OF THE CRIMINAL CODE	
10. (2) Where the judge has adjudged the information to have been proved against a child or young person, and such child or young person signifies in writing before that judge his intention to admit the facts concerning an offence or violation he is alleged to have committed in some other place in the province in which he is brought before that judge, if the offence which he is alleged to have committed is not an offence mentioned in sub-section (2) of section 413 of the Criminal Code, the judge has jurisdiction to make an adjudication with respect to the alleged offence or violation, and to make any disposition provided for in this Act that he deems appropriate.	This sub-section is adapted from section 421A of the Criminal Code. While the Report makes no mention of this section, presumably the same principle applies as to section 421(3).

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JURISDICTION

TEXT	EXPLANATORY NOTES
10. (3) No writing that is executed by a child or young person pursuant to sub-section (1) or sub-section (2) is admissible in evidence against him in any criminal proceedings.	This sub-section is copied from sections 421(4), and 421A(2) of the Criminal Code. Section 421(3) and 421A(1) are "special jurisdiction" provisions of the Criminal Code that have been specifically adapted to this Act. Other "special jurisdiction" provisions, such as section 419 (offences committed on water, during journeys, on aircraft, etc.), section 420 (offences committed on territorial waters), 421(1) (offences committed entirely within one province), 421(2) (libel in a newspaper), 422 (offences committed in territorial divisions), 423 (offences committed not in a province) have not been adapted to, and included in, this Act. It is thought that they can be referred to as they are, and do not need to be specifically adapted to this Act. It is submitted that, by virtue of Section 27 of the new Interpretation Act, (Section 28 of the old Interpretation Act) they would be made to apply to any offence against the laws of Canada.

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POWER OF JUDGE AND COURT

TEXT	EXPLANATORY NOTES
11. Every judge in the exercise of his jurisdiction under this Act has all the powers of a magistrate.	Present Section 6(1). The juvenile court judge is hereby given the authority of two or more justices of the peace. Sections 2(22) and 425 of the Criminal Code. Sub-sections (2) and (3) of present section 6 are omitted in this Act. Sub-section (2) gives the juvenile court judge all the powers and duties, with respect to juvenile offenders, vested in, or imposed on a judge, stipendiary magistrate, justice or justices, by or under the Prisons and Reformatories Act. Sub-section(3)safeguards the discretion of the juvenile court judge as to the term for which he may commit a juvenile delinquent.
	While some provisions of the Prisons and Reformatories Act conflict or duplicate the provisions of the proposed Act (for example, sections 26, 27, 28), it is submitted that no specific reference to the Prisons and Reformatories Act should be necessary, in view of the fact that the proposed Act purports to deal fully and comprehensively with the time and place of detention of offenders, and in view of section 5(2) of this Act.

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POWERS OF JUDGE AND COURT

TEXT	EXPLANATORY NOTES
11. (Cont'd)	The powers of the juvenile court judge need not be supplemented by the Prisons and Reformatories Act. Of course, the Prisons and Reformatories Act will continue to apply to young offenders referred to the ordinary courts for both trial and sentence.

POWERS OF JUDGE AND COURT

TEXT

12. Every judge has the same power and authority to preserve order in a court over which he presides as may be exercised by the superior court of criminal jurisdiction of the province during the sittings thereof.

EXPLANATORY NOTES

Present section 36(1) of the Juvenile Delinquents Act gives the juvenile court the same powers and authority to preserve order in court as are exercised by any court in Canada. Although the present wording has apparently created no difficulty, the proposed section departs from it, adopting instead the wording of section 426 of the Criminal Code, which was discussed in Re Hawkins, 1965, 53 W.W.R. 406, where it was held by Branca, J., of the Supreme Court of B.C. (in chambers) that section 426 gives a magistrate, who is not a court of record, statutory authority to punish for contempt of court committed in facie. Where the provincial law creating a juvenile court declares such court to be a court of record, the proposed section adds nothing to the inherent power which such court already possesses to deal with contempt in facie. On the other hand, the proposed section is useful in cases where a magistrate acts as persona designata - since such magistrate does not then constitute a court of record.

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POWERS OF JUDGE AND COURT

TEXT	EXPLANATORY NOTES
13. (1) A court may make rules of court not inconsistent with this Act or any other Act of the Parliament of Canada concerning matters that fall within the ambit of this Act.	Recommendation 52, paragraph 272. This section is adapted from section 424 of the Criminal Code.
(2) Rules under sub-section (1) may be made (a) generally to regulate the duties of the officers of the court and any other matter considered expedient to attain the ends of justice and carry into effect the provisions of the law; (b) to regulate the practice and procedure in the court; (c) to formulate policy directives concerning intake, detention, case selection, adjustment, or any other matter which the court deems expedient to regulate.	
(3) No rule under this section shall be in force or valid in a Province or territorial division thereof unless approved by the Attorney General of the Province.	

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POWERS OF JUDGE AND COURT

TEXT	EXPLANATORY NOTES
14. Every judge may enforce the due execution of a lawful process or order issued by him under this Act by the means provided by the law for enforcing the execution of the process of other courts in like cases.	Present section 36(2) of the Juvenile Delinquents Act slightly modified.
15. (1) The clerk of a court has power ex officio to administer oaths.	Present section 11(1).
(2) The clerk of a court has power, in the absence of a judge, to adjourn any hearing for a definite period not to exceed ten days, except where a child or young person is being held in detention otherwise than by order of a judge consequent to a detention hearing.	The 10 day period is adopted from section 11(1) of the present Act. It is arbitrary and could be changed.
(3) Where a child or young person is brought before the Court, it is the duty of the clerk of such court to send, or cause to be served, under the supervision of a judge, all notices as may be required by this Act, and also to notify the probation officer or chief probation officer in advance where any child is to appear before the court for any hearing under this Act.	Present section 11(2) modified by providing, in addition to the duty concerning notice to a probation officer, the duty concerning all notices required by the Act.

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POWERS OF JUDGE AND COURT

TEXT	EXPLANATORY NOTES
16. (1) Where an adjudicatory hearing is commenced by a judge and such judge dies, or is, for any reason, unable to continue the hearing, another judge for the same territorial division may act in the place of the judge before whom the hearing was commenced.	This section is adapted from section 698 of the Criminal Code.
(2) A judge who, pursuant to sub-section (1), acts in the place of a judge before whom an adjudicatory hearing has been commenced (a) shall, if, pursuant to sub-section (1) of section 56, an adjudication has been made, proceed with the case in the manner provided by section 57, or, (b) shall, if no adjudication has been made pursuant to sub-section (1) of section 56, commence the adjudicatory hearing again.	
(3) Where a probation order is made concerning a child offender, a young offender or a violator by a judge who thereafter dies or is, for any reason, unable to act, another judge for the same territorial jurisdiction may make an order under section 63, section 64 or section 65, as the case may be.	

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POWERS OF JUDGE AND COURT

TEXT	EXPLANATORY NOTES
17. Under no circumstances under this Act can a court or a judge order costs to be paid by a child or young person.	This provision is intended to implement the principle set out in recommendation 70, and in paragraph 296. Present section 22(1) of the Juvenile Delinquents Act implies that such an order is possible. This section is included here in order to make sure that the principle is not forgotten. If the Act is self-contained, no mention of it would be necessary; it would suffice not to give the court the power to order costs. Alternatively, should it be desirable to impress the principle on the judges, this section should be included under the disposition part of the Act.

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TEXT	PROCEDURE	EXPLANATORY NOTES
ARREST 18. (1) Anyone who arrests a child or young person without a warrant shall forthwith deliver that child or young person to a peace officer and the peace officer shall deal with such child or young person in the manner hereinafter provided.		This provision is adapted from section 438(1) of the Criminal Code. In paragraph 211, the Committee, referring to section 438(2) of the Criminal Code, recommended that a similar provision be made in this Act. This specific point was not dealt with expressly by the Committee. It is suggested that, for the sake of completeness, it might be useful, since anyone may arrest without warrant a person whom he finds committing an indictable offence (434) or whom he believes on reasonable and probable grounds has committed a criminal offence and is escaping or pursued. (436). It could be questioned whether such power of arrest should extend to children and young offenders. It is submitted that such power should be maintained under the Act. Indeed, a child or a young person found committing a theft, assault, etc., should be liable to immediate arrest by anybody.

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TEXT	PROCEDURE	EXPLANATORY NOTES

ARREST

18. (2) A peace officer who receives delivery of and detains a child or young person who has been arrested without a warrant, or who arrests a child or young person with or without a warrant shall, without delay, take or cause to be taken such child or young person before the juvenile court.

This is adapted from section 438(2) of the Criminal Code and complies with the principle of present section 8(1), which requires all cases to go to the juvenile court. The purpose of this sub-section is two-fold:

1) to provide for prompt production of the child or young person before the court; 2) to provide that such production shall be made to the juvenile court. As noted above, it combines the principles set out in section 438(2) of the Criminal Code and in section 8(1) of the present Juvenile Delinquents Act, respectively. Should the expression "without delay" be too demanding on the police, the word "undue" could be added. Recommendation 37 states that the law should make it clear that there is an obligation on the authorities to bring promptly before the court young persons who are being dealt with under federal legislation relating to juveniles.

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PROCEDURE

TEXT	EXPLANATORY NOTES
19. A police officer shall bring to the attention of the court or judge every child or young person whom he believes on reasonable and probable grounds has committed an offence.	This section is intended to implement the principle set out in paragraph 197(1) of the Report. It is one of the principles stated by the Committee as a means of avoiding the "dangers of arbitrariness and lack of harmony between the goal sought by the legislator and the practices followed in administering the law". (Recommendation 32) At page 12 of the Report of the Couchiching Conference on Justice and the Juvenile, April 16-18, 1967, appears the following comment: "It was felt that Section (1) of Paragraph 197 of the Report was completely unworkable from an administrative point of view as well as being unnecessary". The principle is included in this discussion draft for the purpose of focusing attention on the issue.

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TEXT	PROCEDURE	EXPLANATORY NOTES

INFORMATION

20. (1) A judge may receive an information from anyone who, upon reasonable and probable grounds, believes that a child or young person has committed an offence or a violation, and he may issue, where he considers that a case for so doing is made out, a summons or warrant to compel the child or young person to attend before the juvenile court.

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TEXT	PROCEDURE	EXPLANATORY NOTES
INFORMATION		
20. (2) A judge has exclusive jurisdiction to receive an information under this section.		There is no recommendation concerning the subject matter of this subsection. Present section 8(1) indicates the court before which the child must be taken, without mentioning what court may issue a summons or a warrant. If the juvenile court is to perform a useful screening function, it should have exclusive jurisdiction over the laying of informations against juveniles. This is a mere extension of the principle of present section 8(1), which requires that all cases where a child is arrested with or without a warrant be taken before the juvenile court. Present section 8(1) states further that if a child is taken before a justice upon a summons or under a warrant, or for any other reason, it is the duty of the justice to transfer the case to the juvenile court. Impliedly, the justice has, under present section 8(1), the power to issue a summons or warrant. Under the proposed section, the justice has no jurisdiction to receive an information. In other words, he has to refer to the juvenile court the persons seeking to lay an information. This exclusive power of the juvenile court is necessary in view of the recommended

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TEXT	PROCEDURE	EXPLANATORY NOTES
INFORMATION		
20. (2) (Cont'd)		provisions concerning informal adjustment, in cases where, after a preliminary conference, it would appear that the laying of an information is not necessary. (See paragraph 267).
(3) An information laid under this section shall allege that the child or young person has committed anywhere an offence or a violation that may be dealt with in the province where the juvenile court judge has jurisdiction, and that the child or young person (a) is or is believed to be, or (b) resides or is believed to reside, within the territorial jurisdiction of the judge.		Recommendation 53, and paragraph 258 call for a standard form of information. This sub-section is adapted from section 439 of the Criminal Code.
(4) An information that is laid under this section may be in Form 2...		

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PROCEDURE

TEXT	EXPLANATORY NOTES
SUMMONS TO CHILD OR YOUNG PERSON	
Contents	
21. (1) A summons shall	Adapted from section 441(1) of the Criminal Code.
(a) be directed to the child or young person;	
(b) set out briefly the offence or violation in respect of which an information is laid against that child or young person;	
(c) require the child or young person to appear at a time and place to be stated therein, and	
(d) state clearly that the child or young person to whom the summons is directed has the right to be represented by counsel.	
(2) A summons may be in Form 3.	

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PROCEDURE

TEXT	EXPLANATORY NOTES
SUMMONS TO CHILD OR YOUNG PERSON Service by Mail	
21. (3) A summons directed to a child or young person may be sent by mail to that child or young person.	Service by mail is not provided for in section 441 of the Criminal Code; however, this is now done in at least some juvenile courts. To require personal service in the first instance would put the courts to expense and trouble. It would probably create a personnel problem immediately, as some courts might not be able to cope with the extra work. The principle of service by mail should be discussed.

PROCEDURE

TEXT	EXPLANATORY NOTES
SUMMONS TO CHILD OR YOUNG PERSON Personal Service	
21. (4) If a child or young person to whom a summons has been mailed does not appear at the time and place stipulated in the summons mailed to him, a second summons may be issued by the judge, which shall be served by a peace officer or other person designated by the judge, who shall deliver it personally to the child or young person to whom it is directed, or, if that child or young person cannot conveniently be found, shall leave it for him at his last or usual place of abode with some inmate thereof who appears to be at least seventeen years of age.	This provision for personal service is adapted from section 441(3) of the Criminal Code. In the Criminal Code, service is to be carried out by a peace officer. In this draft, "or other person designated by the judge" has been added, since some courts have service made by their own employees.

....

PROCEDURE

TEXT	EXPLANATORY NOTES
WARRANT	
22. (1) A warrant shall (a) name or describe the child or young person; (b) set out briefly the offence or violation in respect of which an information is made against that child or young person; and (c) order that the child or young person be arrested and brought before the judge who issued the warrant, or another judge for the same territorial jurisdiction, to be dealt with by such judge.	This provision is adapted from section 442(1) of the Criminal Code.
(2) A warrant remains in force until it is executed, and need not be made returnable at any particular time.	Adapted from Section 442(2) of the Criminal Code.
(3) A warrant that is authorized in this Act shall be signed by the judge who issued it, and may be directed (a) to a peace officer by name; (b) to a peace officer by name and all other peace officers within the territorial jurisdiction of the judge; or (c) generally to all peace officers within the territorial jurisdiction of the judge.	This section is adapted from section 443 of the Criminal Code.

PROCEDURE

TEXT	EXPLANATORY NOTES
WARRANT	
23. (1) A judge may issue a warrant in Form 5. for the arrest of a child or young person, notwithstanding that a summons has already been issued to require the appearance of the child or young person.	Adapted from section 444 of the Criminal Code.
(2) Where (a) service of a summons is proved and the child or young person does not appear, or (b) it appears that a summons cannot be served because the child or young person is evading service, a judge may issue a warrant of arrest.	

...

PROCEDURE

TEXT	EXPLANATORY NOTES
EXECUTION OF WARRANT	
24. (1) A warrant may be executed by arresting the child or young person (a) wherever he is found within the territorial jurisdiction of the judge by whom the warrant was issued, or (b) wherever he is found in Canada, in the case of a fresh pursuit.	Adapted from section 445 of the Criminal Code.
(2) A warrant may be executed by a person who is (a) the peace officer named in the warrant, or (b) one of the peace officers to whom it is directed, whether or not the place in which the warrant is to be executed is within the territory for which the person is a peace officer.	

...

PROCEDURE

TEXT	EXPLANATORY NOTES
ENDORSEMENT OF WARRANT	
25. (1) Where a warrant for the arrest of a child or young person cannot be executed in accordance with section 24, a judge within whose jurisdiction the child or young person is or is believed to be shall, upon application, and upon proof on oath or by affidavit of the signature of the judge who issued the warrant, authorize the execution of the warrant within his jurisdiction by making an endorsement, which may be in Form .6. , upon the warrant.	This provision is adapted from section 447 of the Criminal Code. It should cover the subject matter of section 17(3) and (4) in the present Juvenile Delinquents Act.
(2) An endorsement that is made upon a warrant pursuant to sub-section (1) is sufficient authority to the peace officer to whom it was originally directed, and to all peace officers within the territorial jurisdiction of the judge by whom it was endorsed, to execute the warrant and to take the child or young person before the judge who issued the warrant.	

....

PROCEDURE

TEXT	EXPLANATORY NOTES
NOTICE TO PARENTS	
26. (1) Where a summons directed to a child or young person has been issued by a judge, notice of such summons directed to the parent or guardian of such child or young person shall be issued by the judge who issued the summons.	Section 10 of the present Juvenile Delinquents Act is concerned with notice to parents and guardians. The first part of section 10(1) is as follows: "Due notice of the hearing of any charge of delinquency shall be served on the parent or parents or the guardian of the child,....." What constitutes a "notice" or "service" thereof is not defined; however, it was the opinion of the Supreme Court of Canada in Gerald Smith and Her Majesty the Queen [1959] S.C.R. 638, that a letter written by a probation officer to the father of a child did not constitute such notice, even though, during telephone conversations between the probation officer and the child, the father acknowledged having received the letter.
(2) Where a child or young person is being detained pending an adjudicatory hearing, notice of such hearing, directed to the parent or guardian of such child or young person, shall be issued by the judge.	

....

PROCEDURE

TEXT	EXPLANATORY NOTES
NOTICE TO PARENTS 26. (3) The notice issued pursuant to sub-sections (1) and (2) shall (a) be in writing; (b) state the name of the child or young person concerning whom an information has been received by the judge, and who is the subject of a summons issued by the judge or who is being detained pending an adjudicatory hearing; (c) be directed to the parent or guardian of the child or young person who is the subject of the summons issued by the judge, or who is being detained pending an adjudicatory hearing; (d) set out briefly the offence or violation in respect of which an information has been received concerning such child or young person;	The Committee recommended that notice be the responsibility of the judge. (Paragraph 253). The Report stated that the form of notice should be specified. (Recommendation 53; also paragraph 254).

PROCEDURE

TEXT	EXPLANATORY NOTES
26. (3) (Cont'd)	
(e) require that one or both of the parents, or the guardian, appear with the child or young person named in the notice at the time and place stated therein;	"Power should also be given to the Court to order the attendance of both parents where it appears to the Court that there is a conflict between the parents of the child as to the course to be followed by the parents in relation to the child or where, in the opinion of the Court, the disposition of the Court would be likely to give rise to conflict between the parents." (Report of the Couchiching Conference, p. 26)
(f) inform the person or persons to whom it is directed that a failure to comply with the notice may constitute contempt of court;	This provision is made pursuant to recommendations 86 and 54, and paragraphs 255, 256 and 356 of the Report. Penal sanctions against parents are considered appropriate where the parents do not cooperate with the court. Section 14 of this discussion draft provides that every judge may enforce the due execution of a lawful process or order issued by him under the Act.

...

PROCEDURE

TEXT	EXPLANATORY NOTES
26. (3) (Cont'd) (g) have attached to it a copy of the summons concerning the child or young person with whom one or both parents, or the guardian, are required to appear, if a summons has been issued; and (h) state clearly that the child or young person named in the notice has the right to be represented by counsel.	Recommendation 50 and paragraph 249 are to the effect that the notice to parents and guardians should state that the child is entitled to be represented by counsel.
26. (4) A notice under this section may be in Form 7.	The Report recommends a standard form of notice. (Recommendation 53; also paragraph 254).
26. (5) In lieu of personal service in the first instance, a notice issued under this section may be sent by mail to the parent or guardian to whom it is directed.	This provision for service by mail is thought to be desirable to lessen the administrative burden on the juvenile courts.

....

PROCEDURE

TEXT	EXPLANATORY NOTES
NOTICE TO PARENTS (Service 26. (6) If the parent or guardian to whom a notice pursuant to this section has been mailed does not appear with the child or the young person named in the notice at the time and place stated therein, a second notice shall be issued by the judge, which shall be served by a peace officer or other person designated by the judge, who shall deliver it personally to the parent or guardian to whom it is directed, or, if that person cannot conveniently be found, shall leave it for him at his last or usual place of abode with some inmate thereof who appears to be at least seventeen years of age.	Adapted from 441(3) of the Criminal Code.
26. (7) Where the parent or guardian of a child or young person appears before the court with the child or young person, the judge may dispense with notice under this section.	This sub-section is intended to cover those situations where a child or young person is apprehended at night and brought before the court the next morning. In such cases, it is the practice of the police or the courts in at least some jurisdictions to give the parents notice by telephone. To require written notice in such cases would slow up the administration of justice.

....

PROCEDURE

TEXT	EXPLANATORY NOTES
NOTICE TO A FRIEND OR RELATIVE	
27. (1) Where the whereabouts of the parents or guardian of a child or young person are not known, or where, in the opinion of a judge, notice to the parents or guardian requiring their attendance at court would constitute an undue hardship, the notice provided for in section 26 may be dispensed with, and the judge may, in his discretion, issue a notice of a hearing concerning a child or young person directed to a friend or relative of the child or young person, who may appear with such child or young person.	The Committee recommended that this sort of flexibility concerning notice should be written into a new Act. (Recommendation 52, and paragraph 254).

....

PROCEDURE

TEXT

EXPLANATORY NOTES

NOTICE TO A FRIEND OR RELATIVE

27. (2) The notice issued pursuant to sub-section (1) shall

(a) be in writing;

(b) state the name of the child or young person concerning whom an information has been received by the judge, and who is the subject of a summons issued by the judge, or who is being detained pending an adjudicatory hearing;

(c) be directed to a friend or relative of the child or young person who is the subject of the summons issued by the judge, or who is being detained pending an adjudicatory hearing;

(d) set out briefly the offence or violation in respect of which an information has been received concerning such child or young person;

(e) state that the friend or relative to whom the notice is directed may appear with the child or young person named in the notice at the time and place stated therein;

....

PROCEDURE

TEXT	EXPLANATORY NOTES
27. (2) (Cont'd) (f) have attached to it a copy of the summons concerning the child or young person with whom the friend or relative may appear, if such summons has been issued; and	
(g) state clearly that the child or young person named in the notice has the right to be represented by counsel.	
27. (3) A notice under this section may be in Form 8.	
27. (4) A notice issued under this section shall be sent by mail to the friend or relative to whom it is directed.	

....

INFORMAL ADJUSTMENT

TEXT	EXPLANATORY NOTES
INFORMAL ADJUSTMENT	
28. (1) Where, under section 20, a judge is satisfied that there is evidence or belief upon which an information could reasonably be received, he may authorize a probation officer to confer in a preliminary conference with the child or young person believed to have committed an offence or a violation, his parents, guardian, or other interested persons, concerning the advisability of laying the information, and with a view to adjusting such cases without the laying of an information.	Recommendation 58 and paragraph 269. The Committee stated that the practice of making informal adjustments, which the courts have developed without the sanction of the law, should continue within a limited degree and under precise legal control. In paragraph 268, arguments in favour of permitting informal adjustment are set out. The New York Statute is said by the Committee to be an acceptable solution to the problems presented by informal adjustment. The section here is largely inspired by section 734 of the New York Statute and by section 3-8 of the Illinois Statute. However, the Committee suggested that the law should provide that informal adjustment be permitted only (1) where the police investigation indicates clearly that an offence has been committed (2) where the substance of the complaint is admitted by the child and (3) where the express consent of the parents is obtained. In all cases, the efforts to effect informal adjustment should be limited to a period of not more than two months.

....

INFORMAL ADJUSTMENT

TEXT	EXPLANATORY NOTES
28. (1) (Cont'd)	The limitation period is implemented in subsection(6) and conditions (2) and (3) are implemented in subsection (7).
	The first condition is embodied, with modifications, in sub-section (1); it is thought that, if the judge is satisfied that an information may be received, this implies that an offence has been committed. The judge may order a preliminary conference only in cases where an information could be received: i.e., in cases where the judge is satisfied that the allegations of the person seeking to lay an information are reasonably grounded.
28. (2) Where a child or young person is detained, the holding of a preliminary conference under this section shall not have the effect of prolonging the detention of such child or young person beyond the period permitted by section 29.	

....

INFORMAL ADJUSTMENT

TEXT	EXPLANATORY NOTES
INFORMAL ADJUSTMENT	
28. (3) In no case may the probation officer prevent the laying of an information by any person who seeks to do so under this Act.	This sub-section is copied almost word for word from Section 734(b) of the New York Statute and from Section 3-8(3) of the Illinois Statute. The judge, of course, may exercise his discretion in receiving an information, under section 20. On this subject, a strong argument could be made that the court should have unrestricted power to authorize or deny the laying of an information. The point is discussed by William H. Sheridan of the Children's Bureau in Washington, in a pamphlet entitled: "Juvenile Court Intake". At pages 141 to 144, he discusses the advisability of a court's having sole discretion in permitting or denying a petition. At page 141, after questioning the advisability of a court's having the power to deny a petition in civil cases concerning adoption, etc., he goes on to say: "Delinquency cases can be considered in a different light, at least those which involve an offense which if committed by an adult would be a crime. Here the State is usually a party to the action and the role of intake might be analogous to that of the prosecutor in a criminal case.

....

INFORMAL ADJUSTMENT

TEXT

28. (3) (Cont'd)

EXPLANATORY NOTES

Policy-wise empowering the court to deny a petition in delinquency cases would also appear to be sound because it can prevent petty complaints, often motivated by revenge and animosity growing out of neighborhood differences, from cluttering up the court. These cases can usually be handled in other ways. In fact, it is generally recognized that the discretion that is and should be vested in the police in making referrals to court should eliminate such cases."

At pages 143 and 144, when discussing the New York Statute, which contains a provision similar to draft subsection (3) opposite, Mr. Sheridan questioned the provision for an absolute right to file a petition in delinquency cases. He wrote:

"It is interesting to note that the recently passed Family Court Act in New York State provides that a preliminary procedure, similar for neglect and delinquency, may be authorized by rule of court. It is not mandatory and specifically provides that the probation service 'may not prevent' any person from filing a petition.

....

INFORMAL ADJUSTMENT

TEXT

28. (3) (Cont'd)

EXPLANATORY NOTES

It permits informal adjustments to be made at intake but includes provisions designed to protect the rights of the parties in this process. For example, the period is limited to two months without leave of the judge who may extend this period an additional 30 days. It also provides that a person may not be prevented from filing a petition, nor can any person be compelled to appear at any conference, produce any papers, or visit any place. A provision is also included which provides that no statement made at a preliminary conference is admissible in an adjudicatory hearing in family court or in a proceeding in a criminal court prior to conviction. These provisions have already been made part of the rules of court. The provision for the absolute right to file a petition in delinquency cases is questionable, but the other provisions appear to be reasonable and necessary."

....

INFORMAL ADJUSTMENT

TEXT	EXPLANATORY NOTES
INFORMAL ADJUSTMENT	
28. (4) A probation officer acting under this section is not authorized to compel any person to appear at the conference, produce any papers, or visit any place.	This provision is taken from section 3-8(4) of the Illinois Statute and from section 734(d) of the New York Statute. Apart from these references, this subsection is self explanatory; to provide otherwise would give an unjustified authority to the probation officer.
28. (5) No statement made in relation to or during a preliminary conference shall be used or receivable in evidence at an adjudicatory hearing or at any trial thereafter taking place.	This sub-section is adapted from section 3-8(5) of the Illinois Statute and from section 735 of the New York Statute, as well as from section 5 of the Canada Evidence Act. This provision follows from the non-judicial character of the conference.
28. (6) Efforts at adjustment under this section shall not extend for a period of more than 2 months.	This limitation period of 2 months was recommended by the Committee in paragraph 269, and in recommendation 58.
28. (7) No adjustment shall be made under this section unless (a) the child or young person admits the substance of the complaint; and (b) the written consent of the parents or the guardian is obtained.	These two conditions precedent to an informal adjustment were recommended in paragraph 269 of the Report, and in recommendation 58. It goes without saying that, for the informal adjustment to be successful, the child or young person must cooperate, as well as the parent or the guardian.

....

INFORMAL ADJUSTMENT

TEXT	EXPLANATORY NOTES
INFORMAL ADJUSTMENT	
28. (8) Before the expiration of the period mentioned in sub-section (6), the probation officer shall report in writing to the judge, (a) the conditions of the adjustment, or (b) the fact that no suitable adjustment could be made.	There is no recommendation on this point; however, the obligation to report the conditions of the adjustment to the judge is a means of achieving "precise legal control". A negative report should not refer to the reason why the adjustment could not be worked out, because, if it did, the rights of the child to a fair trial could be negatived by the cognizance of the Court of prejudicial material.
28. (9) Where a person seeking to lay an information objects to an informal adjustment, or where a report is made pursuant to paragraph (b) of sub-section (8), the judge shall proceed in accordance with section 20.	
28. (10) No adjustment shall be made under this section where it appears that (a) the alleged offence involves risk of serious bodily harm, or (b) where the alleged offender or violator, as the case may be, has shown previous anti-social conduct, and a court appearance seems necessary or desirable.	The principles of this provision are set out in paragraph 197(2)(a) and (b) of the Report.

....

INFORMAL ADJUSTMENT

TEXT

INFORMAL ADJUSTMENT

28. (11) A record shall be maintained by the court of all cases where an adjustment has been made pursuant to this section.

EXPLANATORY NOTES

Paragraph 193(3) of the Report is as follows:

"Records should be maintained of all cases of informal disposition so that if a child is brought before the court the judge will be in a position to know about the child's prior anti-social conduct".

The principle of "informal adjustment" or "informal disposition" is now contained in section 70 of the Prisons and Reformatories Act, a provision concerning the Province of Ontario. This section makes it mandatory for a court, when dealing with an information concerning a boy under 12, or a girl under 13, to confer with the executive of the children's aid society. Subsection (2) provides for a conference such as is contemplated in section 28 of this draft. Subsection (3) provides that, when the public interest and the welfare of the child will be best served thereby, the court may dispose of the case informally, "instead of committing the child for trial or sentencing the child, as the case may be."

....

INFORMAL ADJUSTMENT

TEXT	EXPLANATORY NOTES
28. (Cont'd)	The court may then "bind" the child to a suitable person, place the child in a foster home, impose a fine not exceeding ten dollars, suspend sentence for an indefinite or definite period, or, if the child has been found guilty or is wilfully wayward and unmanageable, the court may commit the child to an industrial school, reformatory or refuge for girls.

DETENTION

TEXT

DETENTION PENDING PROCEEDINGS

29. (1) Where a child or young person is taken before the court, he shall be immediately released to the custody of his parent or guardian, unless a probation officer, or other person designated by the court, is of the opinion that the matter of detention should be referred to a judge, or the child or young person was arrested under a warrant.

EXPLANATORY NOTES

Except for the principle set out in section 30 of this draft, there is no clear recommendation in the Report on the matter of detention. The Committee dealt with detention facilities more than it did with the judicial control over detention. However, in footnote 22, at page 128, section 17 of the Standard Juvenile Court Act is cited with the apparent approval of the Committee. In view of the principles concerning detention (Recommendation 36, which is embodied in section 30 of this draft), and of the principle stated in paragraph 197(4) concerning the taking of physical custody of a child by the police, it seems that something along the lines of this section should be enacted. The purpose of this section is to provide a procedure whereby the detention of a child or young person would be investigated without delay, with a view to ordering his release, unless the circumstances indicate that the matter should be left to a judge, in which case a judge would hold a detention hearing, after notice thereof had been given to the parent of the child. (subsection 3).

....

DETENTION

TEXT	EXPLANATORY NOTES
29. (2) Unless sooner released, a child or young person shall be brought before a judge within 24 hours, excluding Sundays and holidays, for a detention hearing, to determine whether he shall be further detained.	The period provided for in sub-section (2) is that which is provided in section 438 of the Criminal Code.

NOTICE TO PARENTS

29. (3) Where a child or young person is taken before the court and is not released under subsection (1), his parent or guardian shall be informed by notice in writing, stating the reason why he was not sooner released, and fixing a time and place for the detention hearing.

NOTICE TO PARENTS

29. (4) A notice pursuant to sub-section (3) shall be issued in accordance with section 26, mutatis mutandis.

DETENTION

TEXT	EXPLANATORY NOTES
LIMITATIONS ON DETENTION	
30. No child or young person shall be detained pending an adjudicatory hearing unless (a) it is almost certain that he will run away pending proceedings, or (b) it is almost certain that he will commit an offence dangerous to himself or to the community, or (c) he is a parole violator or a runaway from an institution to which he was committed by a court, or (d) there is no suitable place for the child or young person to go if he is released.	Paragraphs (a), (b) and (c) of this provision are intended to implement the principles contained in recommendation 36, and paragraph 209. The Committee took these principles as formulated by the National Probation and Parole Association (now the National Council on Crime and Delinquency), of the United States. In the report of the Couchiching Conference on "Justice and the Juvenile", the limitations as set out in paragraphs (a), (b) and (c) were questioned as to their adequacy. The following 2 questions were asked: (at page 15) " (i) does it cover the child who does not want to return home before the court appearance? It should (ii) does it cover the case of a child that the Children's Aid Society cannot control before he or she comes to court?" Para. (d) is intended to cover these situations. ....

DETENTION

TEXT	EXPLANATORY NOTES
DETENTION - NOT WITH ADULTS	
31. (1) No child or young person, pending an adjudicatory hearing, shall be detained in any county or other gaol or other place in which adults are or may be imprisoned, but shall be detained at a detention home or shelter used exclusively for children or young persons, or under other custody approved of by the judge or a duly authorized officer of the court.	This is adapted from present section 13(1).
(2) Everyone who contravenes this section is guilty of an offence punishable on summary conviction.	
(3) This section does not apply to a young person concerning whom an order has been made pursuant to paragraph (a) of subsection (1) of section 53.	This is adapted from present section 13(3).
(4) A child or young person who requires care away from his home, but who does not require physical restriction, may be given temporary care in a foster family home or other shelter facility designated by the court.	

....

DETENTION

TEXT	EXPLANATORY NOTES
DETENTION - AVOIDANCE OF	
31. (5) In order to avoid detention, the promise of any trustworthy person to be responsible for the presence of the child or young person when required may be accepted.	This is adapted from present section 14(2), with a larger application. Of interest is recommendation 241, at page 268 of the Report of the Ontario Legislature's Select Committee on Youth, which is that: "No child be placed in a detention facility if it is possible to accommodate such child in either its own home, that of a responsible relative or an approved interested party." There is no mention of bail in this draft. To support the exclusion of any bail provision, reference is made to the following: Recommendation 243, at page 268 of the Report of the Ontario Legislature's Select Committee on Youth states that: "Bail should not be a consideration where juveniles are concerned. A child either should or should not be in a detention facility. Money should not be a criterion of custody for children." The principle that money is irrelevant when considering whether or not an accused should be in custody is supported and discussed by Professor M.L. Friedland in a pamphlet entitled: "Reforming the Bail System" from an

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DETENTION

TEXT

31. (5) (Cont'd)

EXPLANATORY NOTES

address delivered at Kingston, February 22, 1966, to the John Howard Society of Kingston. See especially pages 7, 8 and 9.

The report of the Legislative Council (1955) concerning the Wisconsin Children's Code was adamant in its opposition to the use of bail, and quoted, with approval, from the Standard Juvenile Court Act. At page 41 of the current (1959) edition of the Standard Juvenile Court Act appears the following comment:

"The decision whether to hold a child in detention or to release him should not depend on the availability of a bail bond. Accordingly, provisions regarding bail for adult offenders are not applicable to children within the jurisdiction of the court. This assumes, however, proper detention facilities and procedures. In certain situations, referred to in the section, bail should be allowed. In such cases, of course, the child continues within the jurisdiction of the court."

Section 17.6 is referred to; and is as follows:

"Provisions regarding bail shall not be applicable to children detained in accordance with the provisions of this Act, except that bail may be

....

DETENTION

TEXT	EXPLANATORY NOTES
31. (5) (Cont'd)	allowed when a child who should not be detained lives outside the territorial jurisdiction of the court." At page 487 of an article entitled "The California Juvenile Court", contained in the Stanford Law Review, May 1958, Vol. 10, No. 3, appears the following statement: "Release pending hearing should depend not upon financial ability to post a bond but upon the juvenile court's decision as to whether a youth should be detained pending a formal hearing. Indiscriminate use of bail might deprive a seriously disturbed youth of needed medical care and might aggravate his problems by returning him to an environment which caused his troubles. For these reasons it is recommended that section 828 of the Welfare Code, authorizing bail at the trial judge's discretion, be repealed."
31. (6) This section does not apply to a child apparently over the age of fourteen years who, in the opinion of the judge, or, in his absence, of the sheriff, or, in the absence of both the judge and the sheriff, of the mayor or other chief magistrate of the city, town, county or place, cannot safely be confined in any place other than a gaol or lock-up.	Present section 13(4) of the Juvenile Delinquents Act.

....

PROCEDURE AT HEARING

TEXT	EXPLANATORY NOTES
32. (1) No hearing under this Act shall be held unless an information has been received in Form 2. by a judge of a juvenile court.	695(1) of the Criminal Code adapted. Sections 32-44 of this draft are adaptations from the Criminal Code. Alternatively, a reference section such as section 5(1) of the present Juvenile Delinquents Act could provide that prosecutions and trials under this Act would be governed by the provisions of the Criminal Code relating to summary convictions, except when in conflict with specific provisions of this Act.
32. (2) Nothing in this Act or any other law shall be deemed to require a judge before whom an adjudicatory hearing is held to be the judge by whom the information has been received or the detention hearing was held.	697(1) of the Criminal Code adapted.

....

PROCEDURE AT HEARING

TEXT	EXPLANATORY NOTES
INFORMATION	
33. In proceedings to which this Part applies, the information (a) shall be in writing and under oath, and (b) may charge more than one offence or violation, or may charge offences and violations, but where more than one offence or violation is charged, each offence or violation shall be set out in a separate count.	Section 696(1) of the Criminal Code, adapted.

PROCEDURE AT HEARING

TEXT	EXPLANATORY NOTES
COUNTS IN AN INFORMATION	
34. (1) Each count in an information shall in general apply to a single transaction and shall contain and is sufficient if it contains in substance a statement that the child or young person committed an offence or a violation therein specified.	Sections 492 and 701(1) of the Criminal Code.
(2) The statement referred to in subsection (1) may be	
(a) in popular language without technical averments or allegations of matters that are not essential to be proved;	
(b) in the words of the enactment that describes the offence or violation;	
(c) in words that are sufficient to give the alleged offender or violator notice of the offence or violation with which he is charged.	

....

PROCEDURE OF HEARING

TEXT	EXPLANATORY NOTES
34. (3) A count shall contain sufficient detail of the circumstances of the alleged offence or violation to give to the alleged offender or violator reasonable information with respect to the transaction and to identify the same, but otherwise the absence or insufficiency of details does not vitiate the count.	
(4) A count may refer to any section, subsection, paragraph or sub-paragraph of the enactment that creates, according to this Act, the offence or violation, and for the purpose of determining whether a count is sufficient, consideration shall be given to any such reference.	492(5) of the Criminal Code.

....

PROCEDURE AT HEARING

TEXT	EXPLANATORY NOTES
SUFFICIENCY OF COUNTS	
35. No count in an information is insufficient by reason of the absence of details where, in the opinion of the court, the count otherwise fulfils the requirements of section 34 and, without restricting the application of the foregoing, no count in an information is insufficient by reason only that	Section 493, Criminal Code.
(a) it does not name the person injured or intended or attempted to be injured;	
(b) it does not name the person who owns or has a special property or interest in property mentioned in the count;	
(c) it charges an intent to defraud without naming or describing the person whom it was intended to defraud;	
(d) it does not set out any writing that is the subject of the charge;	
(e) it does not set out the words used where words that are alleged to have been used are the subject of the charge;	
(f) it does not specify the means by which the alleged offence was committed;	

....

PROCEDURE AT HEARING

TEXT	EXPLANATORY NOTES
35. (Cont'd)	
(g) it does not name or describe with precision any person, place or thing, or	
(h) it does not, where the consent of a person, official or authority is required before proceedings may be instituted for an offence or violation, state that the consent has been obtained.	

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PROCEDURE AT HEARING

TEXT	EXPLANATORY NOTES
PARTICULARS	
36. The court may, if it is satisfied that it is necessary for a fair hearing, order that a particular further describing any matter relevant to the proceedings be furnished to the alleged offender or violator.	Section 701(2) of the Criminal Code.
37. No exception, exemption, proviso, excuse or qualification prescribed by law is required to be set out or negatived, as the case may be, in an information.	702(1) of the Criminal Code.

PROCEDURE AT HEARING

TEXT	EXPLANATORY NOTES
DEFECTS AND OBJECTIONS	
38. (1) Any objection to an information for a defect apparent on its face shall be taken by motion to quash the information before the alleged offender or violator has pleaded, and thereafter only by leave of the juvenile court before which the adjudicatory hearing takes place.	Section 704 of the Criminal Code.
(2) A juvenile court may, upon the hearing of an information, amend the information or a particular that is furnished under section 35 to make the information or particular conform to the evidence if there appears to be variance between the evidence and (a) the allegation in the information, or (b) the allegation in the information (i) as amended, or (ii) as it would have been if amended in conformity with any particular that has been furnished pursuant to section 35.	

....

PROCEDURE AT HEARING

TEXT

EXPLANATORY NOTES

DEFECTS AND OBJECTIONS

38. (3) A juvenile court may, at any stage of the adjudicatory hearing, amend the information as may be necessary if it appears

(a) that the information

(i) fails to state or states defectively anything that is requisite to constitute the offence or violation

(ii) does not negative an exception that should be negatived, or

(iii) is in any way defective in substance, and the matters to be alleged in the proposed amendment are disclosed by the evidence taken at the hearing, or

(b) that the information is in any way defective in form.

....

PROCEDURE AT HEARING

TEXT

EXPLANATORY NOTES

DEFECTS AND OBJECTIONS

38. (4) A variance between the information and the evidence taken on the hearing is not material with respect to

(a) the time when the offence or violation is alleged to have been committed, if it is proved, where applicable, that the information was laid within the prescribed period of limitation, or

(b) the place where the subject matter of the proceedings is alleged to have arisen, if it is proved that it arose within the territorial jurisdiction of the juvenile court that holds the hearing.

....

PROCEDURE AT HEARING

TEXT	EXPLANATORY NOTES
DEFECTS AND OBJECTIONS	
38. (5) The juvenile court shall, in considering whether or not an amendment should be made, consider (a) the evidence taken on the hearing, if any, (b) the circumstances of the case, (c) whether the defendant has been misled or prejudiced in his defence by a variance, error or omission mentioned in subsection (2) or (3) and (d) whether, having regard to the merits of the case, the proposed amendment can be done without injustice being done.	
38. (6) Where in the opinion of the juvenile court the defendant has been misled or prejudiced in his defence by an error or omission in the information, the juvenile court may adjourn the hearing.	Section 704 of the Criminal Code.

....

PROCEDURE AT HEARING

TEXT	EXPLANATORY NOTES
POWERS OF JUVENILE COURT AT HEARING	
39. A juvenile court judge acting under this Part may	Section 451 in part of the Criminal Code.
(a) adjourn the hearing from time to time and change the place of hearing, where it appears to be desirable to do so by reason of the absence of a witness, the inability of a witness who is ill to attend at the place where the justice usually sits, or for any other sufficient reason, but no such adjournment shall be for more than 8 clear days, unless the alleged offender or violator is not held in detention;	
(b) issue a warrant for the arrest of an alleged offender or violator	
(i) who does not appear pursuant to service of a summons upon him, if service is proved, or	
(ii) who does not appear at the time and place to which a hearing has been adjourned;	
(c) regulate the course of the hearing in any way that appears to him to be desirable for the proper administration of justice and that is not inconsistent with this Act.	

....

PROCEDURE AT HEARING

TEXT

EXPLANATORY NOTES

TAKING EVIDENCE OF WITNESSES

40. (1) When the alleged offender or violator is before a juvenile court holding an adjudicatory hearing, the juvenile court shall

(a) hear each witness called on the part of the prosecution or of the defendant and who testifies under oath to any matter relevant to the hearing;

(b) allow cross-examination of the witnesses;

(c) cause a record of the evidence of each witness to be taken

(i) by a stenographer appointed by him, or in legible writing, in the form of a deposition in Form .10. or,

(ii) in a province where a sound recording apparatus is authorized by or under provincial legislation for use in civil cases, by the type of apparatus so authorized and in accordance with the requirements of the provincial legislation.

Section 453 of the Criminal Code - adapted.

....

PROCEDURE AT HEARING

TEXT

EXPLANATORY NOTES

TAKING EVIDENCE OF WITNESSES

40. (2) Where a deposition is taken down in writing, the juvenile court judge shall, in the presence of the defendant before asking the defendant if he wishes to call witnesses,

(a) cause the deposition to be read to the witness,

(b) cause the deposition to be signed by the witness, and

(c) sign the deposition himself.

40. (3) Where the depositions are taken down in writing the justice may sign

(a) at the end of each deposition, or

(b) at the end of several or of all the depositions in a manner that will indicate that his signature is intended to authenticate each deposition.

40. (4) Where the stenographer appointed to take down the evidence is not a duly sworn court stenographer, he shall make oath that he will truly and faithfully report the evidence.

....

PROCEDURE AT HEARING

TEXT

EXPLANATORY NOTES

TAKING EVIDENCE OF WITNESSES

40. (5) Where the evidence is taken down by a stenographer appointed by the juvenile court judge, it need not be read to or signed by the witnesses, and, where the judge, prosecutor or defendant so request, the evidence shall be transcribed by the stenographer and the transcript shall be accompanied by

(a) an affidavit of the stenographer that it is a true report of the evidence, or

(b) a certificate that it is a true report of the evidence if the stenographer is a duly sworn court stenographer.

40. (6) Where, in accordance with this Act, a record is taken in any proceedings under this Act by a sound recording apparatus, the record so taken shall be dealt with and transcribed, and the transcription certified and used in accordance with the provincial legislation mutatis mutandis mentioned in subsection (1).

....

PROCEDURE AT HEARING

TEXT

EXPLANATORY NOTES

WITNESS REFUSING TO ANSWER

41. (1) Where a person, being present at a hearing pursuant to this Act and being required by the judge of the juvenile court to give evidence

(a) refuses to be sworn,

(b) having been sworn, refuses to answer the questions that are put to him,

(c) fails to produce any writings that he is required to produce, or

(d) refuses to sign his deposition, without offering a reasonable excuse for his failure or refusal,

the judge may, except in the case of a detention hearing, adjourn the hearing and may, in any case, by warrant in Form 11, commit the person to prison for a period not exceeding eight clear days or for the period during which the inquiry is adjourned, whichever is the lesser period.

Section 457 of the Criminal Code.

....

PROCEDURE AT HEARING

TEXT

EXPLANATORY NOTES

WITNESS REFUSING TO ANSWER

41. (2) Where a person to whom sub-section (1) applies is brought before the judge of the juvenile court upon the resumption of the adjourned hearing and again refuses to do what is required from him, the judge may again adjourn the hearing for a period not exceeding eight clear days and commit him to prison for the period of adjournment or any part thereof, and may adjourn the hearing and commit the person to prison from time to time until the person consents to do what is required of him.

41. (3) Nothing in this section shall be deemed to prevent the judge of the juvenile court from making an adjudication upon any other sufficient evidence taken by him.

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PROCEDURE AT HEARING

TEXT	EXPLANATORY NOTES
ABSCONDING WITNESS	
42. (1) A person who, being required by law to attend or remain in attendance for the purpose of giving evidence, fails, without lawful excuse, to attend or remain in attendance accordingly is guilty of contempt of court.	Section 612, Criminal Code.
42. (2) A judge of a juvenile court may deal summarily with a person who is guilty of contempt of court under this section and that person is liable to a fine of one hundred dollars or to imprisonment for ninety days or to both, and may be ordered to pay the costs that are incident to the service of any process under this part and to his detention, if any.	
42. (3) A conviction under this section may be in Form 12 and a warrant of committal in respect of a conviction under this section may be in Form 13.	

....

PROCEDURE AT HEARING

TEXT	EXPLANATORY NOTES
NON-APPEARANCE OF PROSECUTOR	
43. Where the defendant appears for an adjudicatory hearing, and the prosecutor, having had due notice, does not appear, the court may dismiss the information, or may adjourn the hearing to some other time upon such terms as it considers proper.	Section 706, Criminal Code. "Defendant" is defined to include a child or young person concerning whom an information has been received.

....

PROCEDURE AT HEARING

TEXT	EXPLANATORY NOTES
44. (1) Where the prosecutor and defendant appear, the court shall proceed to hold an adjudicatory hearing.	Section 707(1) of the Criminal Code.
44. (2) The defendant shall appear personally, and the court may, if it thinks fit, issue a warrant in Form 4 for the arrest of the defendant, and adjourn the hearing to await his appearance thereto.	Section 707(2), modified to make defendant's appearance mandatory.

PROCEDURE AT HEARING

TEXT	EXPLANATORY NOTES
45. (1) Where the defendant appears, the court shall (a) explain to him the substance of the information in simple language suitable to his age and understanding, and, (b) inform him that, if he so desires, he may admit the facts of the information.	In paragraph 261 appears the following comment: "We recommend that the law be clarified in regard to both the plea procedure and the privilege against self-incrimination". Paragraph (a) is taken from Rule 6 of the Summary Jurisdiction (Children and Young Persons) Rules 1933, at page 366 of Clarke Hall and Morrison on Children, 7th edition. The U.K. Rules of Court were cited with approval by the Committee.
45. (2) No defendant shall be adjudged to be an offender or a violator upon an admission made pursuant to this section, unless such admission is corroborated to the satisfaction of the court by independant and admissible evidence.	Paragraph 261: "The juvenile's admission should serve not as a legal basis for the subsequent proceedings but only as a guide as to how the further course of the trial might best be arranged. The hearing on further evidence should not be regarded as unnecessary merely because of 'an admission of the charge'." (Quoted by the Committee from remarks made by Professor Mannheim of England).

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PROCEDURE AT HEARING

TEXT	EXPLANATORY NOTES
45. (3) Where the defendant does not make an admission pursuant to this section, the court shall proceed with the adjudicatory hearing and shall take the evidence of witnesses for the prosecution and the defendant in accordance with the provisions of Part XV of the Criminal Code relating to preliminary inquiries.	This section, providing a general reference to the specific provisions of the Criminal Code, is an alternative to the specific provisions provided elsewhere in this draft.

PROCEDURE AT HEARING

TEXT	EXPLANATORY NOTES
46. No evidence other than that which is relevant to whether or not the defendant has committed the alleged offence or violation shall be receivable in evidence at an adjudicatory hearing, except pursuant to the provisions of section 53.	The kind of evidence receivable on making a disposition should not be before the judge during adjudication, since it is largely hearsay. See page 87 of "Challenge of Crime in a Free Society" (U.S. President's Report), and the comment following section 21 of the First Tentative Draft of the Uniform Juvenile Court Act.

PROCEDURE AT HEARING

TEXT	EXPLANATORY NOTES
47. (1) The prosecution shall be conducted by a counsel appointed by the Attorney General, where the Attorney General has appointed such counsel.	
47. (2) The defendant is entitled to make his full answer and defense.	
47. (3) Subject to section ..78, every witness at a hearing in proceedings to which this Act applies shall be examined under oath.	

PROCEDURE AT HEARING

TEXT	EXPLANATORY NOTES
48. (1) The court shall, except in any case where the child or young person is legally represented, allow his parent or guardian to assist him in conducting his defence, including the cross-examination of witnesses for the prosecution.	The Summary Jurisdiction (Children and Young Persons) Rules, U.K. 1933, section 5, subsection (1), at page 366 of Clarke Hall and Morrison on Children, 7th edition.
48. (2) Where the parent or guardian cannot be found or cannot, in the opinion of the court, reasonably be required to attend, the court may allow any relation or other responsible person to take the place of the parent or guardian for the purposes of this section.	U.K. Rules, section 5(2) above.

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PROCEDURE AT HEARING

TEXT	EXPLANATORY NOTES
49. If, in any case where the child or young person is not legally represented or assisted in his defence as provided by subsection (1) of section 48, the child or young person, instead of asking questions by way of cross-examination, makes assertions, the court shall then put to the witness such questions as it thinks necessary on behalf of the child or young person and may for this purpose question the child or young person in order to elicit any point arising out of such assertions.	U.K. Rules - Section 9, subsection (2), page 367 of Clarke Hall and Morrison on Children. In paragraph 262, the Committee referred to this section 9 of the English rules and recommended "that appropriate steps be taken" (...) "to provide more adequate guidance to juvenile court judges on matters of procedures". This recommendation seems to be related mostly to the right of confrontation and cross-examination.

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PROCEDURE AT HEARING

TEXT

EXPLANATORY NOTES

ADJOURNMENT

50. The court may, in its discretion, before or during any hearing, except a detention hearing, adjourn such hearing to a time and place to be appointed, and stated in the presence of the parties or their respective counsel or agents, but no such adjournment shall, except with the consent of both parties, be for more than eight days.

HEARING

TEXT	EXPLANATORY NOTES
WITHOUT PUBLICITY	
51. (1) The hearings of children and young persons shall take place without publicity and separately and apart from the trials of adults.	This provision has been adapted from section 12(1) of the present Act. It may be redundant, and the words "separately and apart from the trials of adults" would not be appropriate if the Act covers adults in certain circumstances.

TEXT	HEARING	EXPLANATORY NOTES

PRIVATE

GENERAL PUBLIC EXCLUDED

51. (2) The general public shall be excluded from hearings under this Act and only such persons shall be admitted who, in the opinion of the judge, have a direct interest in the case or in the work of the court.

Recommendation 48 says that, "Members of the public should not be permitted to attend proceedings in a juvenile court, but the judge should be authorized to permit any member of the public to attend where he is satisfied that such a person has a bona fide reason to be present." In paragraph 245, the Committee recommended that the following persons be present: "members of the court and necessary court personnel; parties to the case, their counsel, and other persons having a direct interest in the proceedings." These persons should be included in the phrase "have a direct interest in the case or in the work of the court."

The present section 24(1) of the Juvenile Delinquents Act provides for the exclusion from the courtroom of children, other than the child witnesses. It is submitted that this provision is covered by the new draft provision opposite, which provides that, "only such persons shall be admitted who, in the opinion of the judge, have a direct interest in the case or in the work of the court."

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HEARING

TEXT	EXPLANATORY NOTES
51. (2) (Cont'd)	This provision conforms with current American legislation; for example, in section 19 of the Standard Juvenile Court Act, appears the following: "The general public shall be excluded, and only such persons shall be admitted who are found by the Judge to have a direct interest in the case or in the work of the court." The California Act, section 676, excludes the public, but then goes on to say that the Judge may nevertheless admit "such persons as he deems to have a direct and legitimate interest in the particular case or the work of the Court." Section 260.155 of the Minnesota Code is to the same effect. See also section 18 of the First Tentative Draft of the Uniform Juvenile Court Act, and section 1-20(6) of the Illinois Juvenile Court Act.

HEARING

TEXT	EXPLANATORY NOTES
EXCLUSION OF DEFENDANT	
51. (3) The judge may, in his discretion, order that a defendant be absent from the courtroom, where any evidence is being given the knowledge of which might be injurious to the defendant.	A point that should be considered is whether or not the child or parent should be excluded from the "dispositional hearing" at the discretion of the judge. The provision opposite has been drafted for such consideration. Section 260.155 of the Minnesota Code includes the following: "In a delinquency proceeding, after the child is found to be a delinquent, the court may excuse the presence of the child from the hearing when it is in the best interests of the child to do so. In any proceeding the court may temporarily excuse the presence of the parent or guardian of a minor from the hearing when it is in the best interests of the minor to do so." The purpose served in excluding the child would be to prevent its hearing facts relevant to the disposition of the case, but damaging to the child.

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HEARING

TEXT	EXPLANATORY NOTES
NEWS MEDIA - PRESENT	
51. (4) One representative of the newspapers or other publications or radio shall have the right to be present at any hearing before a juvenile court judge, and, in addition, in the discretion of the judge, one or two other representatives of the newspapers or other publications or radio may be present, but in no case shall there be more than three representatives of the newspapers or other publications or radio present at any hearing under this Act.	Recommendation 47 states that "representatives of the news media should be permitted to attend juvenile court hearings as of right". In paragraph 244 appears the following sentence: "Moreover, we would also suggest that the number of media representatives should probably be limited to three." The Committee went on to say that: "Presumably these representatives would be selected by the media themselves, with a final decision left to the judge in the event of disagreement." We think that the method by which the representatives of the news media are selected does not need to be put into the legislation. At the April 1967 Couchiching Conference on Juvenile Delinquency, in the group seminar dealing with "the court", it was agreed that one member of the news media should be present as of right, and that two more might be present at the discretion of the judge, but that the statutory maximum should be set at 3. This would take the pressure off the judge during a sensational trial. ....

HEARING

TEXT	EXPLANATORY NOTES
51. (4) (Cont'd)	"Radio" is defined in section 28(30) of the new Interpretation Act to mean "any transmission, emission or reception of signs, signals, writing, images and sounds or intelligence of any nature by means of Hertzian waves". Presumably this includes television.

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HEARING

TEXT	EXPLANATORY NOTES
NEWS MEDIA - Reporting of Evidence 51. (5) Except where expressly prohibited by the judge, representatives of the newspapers or other publications or radio shall be permitted to report the evidence adduced at any hearing, but in no case shall the name of any child or young person or witness before the court, or any particular information serving to identify any child or young person before the court, be reported.	Recommendation 47 states that, "Representatives of the news media... except where expressly prohibited by the judge, should be permitted to report the evidence adduced at the hearing, subject to the prohibition against identifying any child before the court, or any child said to have committed an offence." The present section 12(3) now prohibits the publication of the identification of a child before the court on a charge of delinquency. The question of publicity is discussed in an article entitled "Publicity and Juvenile Court Proceedings" by Gilbert Geis, published in the Rocky Mountain Law Review, Vol. 30, No. 2, February 1958, and reprinted by the Children's Bureau, Washington. At page 26 of the reprint, Mr. Geis pointed out that the law should be phrased in such a way that the information obtained through "reportorial investigation", e.g. from the police, should be prohibited from being published. He said: "In this respect, the New Hampshire law nicely blankets the situation: ....

HEARING

TEXT	EXPLANATORY NOTES
51. (5) (Cont'd)	'It shall be unlawful for any newspapers to publish the name or address, or any particular information serving to identify any juvenile delinquent arrested, without the express permission of the court, and it shall be unlawful for any newspaper to publish any of the proceedings of any juvenile court'." At the Couchiching Conference, in the group discussing the court, it was recommended that the protection against identification be extended to witnesses, both adult and child, as a further protection against publicity to the child before the court.

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HEARING

TEXT	EXPLANATORY NOTES
PUBLICATION OF INFORMATION OBTAINED IN ANY WAY	
51. (6) It is unlawful to publish or broadcast the name of any child, young person, or witness appearing before the juvenile court, or the name of any child or young person apprehended by the police, or any particular information serving to identify any child or young person before the court or apprehended by the police.	Sub-section (4) refers specifically to reporters and to information gleaned during a hearing in a juvenile court. This sub-section is intended to cover the wide spectrum of "reportorial investigation" referred to by Geis. If proceedings against adults are to be included in this Act, consideration will have to be given as to whether adults should be protected against publicity. "Broadcasting" is defined by section 28(3) of the new Interpretation Act to mean "the dissemination of any form of radioelectric communication, including radiotelegraph, radiotelephone, the wireless transmission of writing, signs, signals, pictures and sounds of all kinds by means of Hertzian waves, intended to be received by the public either directly or through the medium of relay stations." Section 26(8) states: "Where a word is defined, other parts of speech and grammatical forms of the same word have corresponding meanings."

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HEARING

TEXT	EXPLANATORY NOTES
51. (7) It is unlawful to publish or broadcast the name of any child or young person, or any particular information serving to identify any child or young person in any criminal proceedings involving a child or young person, where the proceedings arise out of an offence against, or conduct contrary to, decency or morality.	In paragraph 241 of the Report, the Committee stated the following: "We think that the prohibition against identification of a child should extend to any criminal proceedings involving a child where the proceedings arise out of an offence against, or conduct contrary to, decency or morality. This prohibition should apply whether the proceedings are before the juvenile court or an adult court."
51. (8) Sub-sections (6) and (7) apply to all newspapers and other publications published anywhere in Canada, and to all radio broadcasts emanating from anywhere in Canada.	This sub-section is an expansion of section 12(4) of the present Act, which refers only to newspapers.
51. (9) Everyone who contravenes this section is guilty of an offence punishable on summary conviction.	When speaking of prohibitions against identifying children and young persons, the Committee stated: "This prohibition should be reinforced by an adequate penalty provision in the Act." (Paragraph 244).

. . . .

WAIVER OF JURISDICTION

TEXT	EXPLANATORY NOTES
WAIVER	
52. Where a young person is before the court upon an information alleging an offence, he, or the Attorney General, may, at any time before a plea is taken, require that he be tried by the ordinary court that would, except for the provisions of this Act, have jurisdiction under the law applicable to the case, and, where the young person or the Attorney General so requires, the court has no jurisdiction to try the young person, but, in case of conviction, the ordinary court shall remand the young person before the court for disposition pursuant to section 57.. of this Act.	Recommendation 17. The Committee endorsed the basic principle of present section 9 - that the decision on the matter of waiver of jurisdiction should rest exclusively with the juvenile court (Paragraph 168). However, the Committee conceded that the Attorney General might, in proper cases, where the interest of the community required a public hearing before the ordinary courts, require the trial to take place in the ordinary courts. The Committee contemplated a procedure whereby the Attorney General might so require, either directly or after refusal by the juvenile court judge to waive jurisdiction. (Paragraph 168). On the other hand, the Committee thought that the young person should have the right to insist upon trial in the ordinary courts. (Paragraph 171). The right of the Attorney General or the young person to require a trial in the ordinary court would deprive the juvenile court of its jurisdiction over the adjudication only; the ordinary court would be required to

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WAIVER OF JURISDICTION

TEXT	EXPLANATORY NOTES
52. (Cont'd)	remand the young person, in case of a conviction, before the juvenile court for disposition. Paragraph 169 of the Report creates a procedural difficulty which is not clarified in recommendation 17, where it mentions the right of the Attorney General to require "directly" or after refusal. Indeed, the power of the Attorney General to require directly an ordinary trial is hard to reconcile in practical terms with the discretion of the court over waiver. The inclusion in the proposed section of the word directly would create the difficulty of determining whether the discretion of the judge or the power of the Attorney General has priority. The juvenile court judge has a discretionary power first, to decide if he should order a waiver hearing, and, second, to waive subsequent to the hearing. The mention of the direct power of the Attorney General to require an ordinary trial could be interpreted as having the effect, where exercised, of depriving the judge of his discretion.

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WAIVER OF JURISDICTION

TEXT

52. (Cont'd)

EXPLANATORY NOTES

Under the recommendation, the right of the Attorney General or the young person would arise only where no order of waiver was made by the judge. The situation could be envisaged where the judge decided to proceed to an adjudicatory hearing without considering the possibility of a waiver. The exercise, at that moment, of the right to require, on behalf of the Attorney General or the young person, an ordinary trial would invite the judge to exercise his discretion on waiver, i.e., waiver for trial and sentence. Should the judge decide not to waive, then the application of the proposed section would automatically operate a transfer of jurisdiction over trial only.

This section does not reflect entirely the recommendation of the Committee. Instead of providing for the right of the Attorney General or defendant to be exercised at any time after the judge has decided not to waive, it provides for this right to be exercised at the arraignment, before a plea is taken. It is felt that this provision is more realistic and more practical in terms of procedure. Indeed, since the exercise

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WAIVER OF JURISDICTION

TEXT	EXPLANATORY NOTES
52. (Cont'd)	by the Attorney General or the defendant of their right to require an ordinary trial may defeat the discretion of the judge, it is preferable to provide for the exercise of this right before the judge takes any decision concerning waiver.

WAIVER OF JURISDICTION

TEXT

53. (1) At any time during an adjudicatory hearing concerning a young person charged with an offence, but before the defence has commenced, the court may order that the young person be taken before the ordinary court that would, except for the provisions of this Act, have jurisdiction under the law applicable to the case

(a) for trial and sentence, or

(b) for trial only; in such case, if the young person is convicted, the ordinary court shall remand him before the court for disposition pursuant to section .57. of this Act.

EXPLANATORY NOTES

The purpose of this section is to implement Recommendation 16, which indicates that the Committee approved of the principle of sub-section (1) of present section 9 of the Juvenile Delinquents Act. The Committee approved of the age requirement of present section 9, i.e., that the accused be fourteen years of age or more (Recommendation 18, paragraph 173), but recommended that the requirement whereby waiver is possible only where the alleged offence is indictable be removed. The proposed section allows waiver only where a young person is alleged to have committed an offence.

The Committee recommended further that, by way of supplemental procedure to present section 9, a case could be referred to the ordinary court for trial only, and then be remanded to the juvenile court for disposition. (Recommendation 17, See also paragraph 168).

The two proposed techniques of waiver are provided for in this section: The court may refer the young person to the ordinary court for trial and sentence (present section 9), or for trial only; in

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WAIVER OF JURISDICTION

TEXT	EXPLANATORY NOTES
53. (1) (Cont'd)	the latter case, the ordinary court shall remand the young person to the juvenile court for disposition. (Kansas Statutes Annotated, Supplement 1965, Juvenile Code, section 38-808(a), referred to). By implication of recommendation 20(b), the referral order should be in writing. It should be noted that waiver could be ordered to a provincial summary conviction court, should the schedule refer to a provincial law for the definition of an offence.
53. (2) The court shall, in considering whether an order pursuant to this section should be made, consider the good of the young person and the interest of the community.	This section retains the principle enunciated in subsection (1) of present section 9. This statutory test was also recommended by the Committee. (See recommendation 16 and paragraph 168).

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WAIVER OF JURISDICTION

TEXT	EXPLANATORY NOTES
53. (3) Where, upon reasonably strong evidence having been adduced at a hearing before a juvenile court judge that a young person has committed an offence, and notice of such hearing has been served on the parent or guardian of the young person, the court deems it advisable under subsection (2) to consider whether an order should be made under this section, it shall	The Committee recommended provision for specific checks in the exercise of the discretion of the juvenile court judge concerning waiver. This subsection is concerned with implementing these recommendations. See paragraph 174 for reference to a waiver hearing. See recommendation 20(c) and also paragraph 175 concerning the requirement that notice of a waiver hearing be sent to the parents. This paragraph complies with recommendations 20(c) and 19. See paragraph 173 of the Report for a discussion of the condition precedent set out in paragraph (a).
(a) cause a full investigation to be conducted under its supervision into the background of the young person and the circumstances of the offence and, pursuant thereto, it may order any social, medical, psychological or psychiatric examination or investigation that it thinks necessary or desirable;	The Committee makes a full investigation into the background of the case a condition precedent to waiver (recommendation 20(a)), but recommendation 19 requires that there be reasonably strong evidence against the young person before the judge can order the investigation to be conducted. This paragraph is intended to cover the suggestion set out in paragraph 174, and recommendation 20(a).

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WAIVER OF JURISDICTION

TEXT	EXPLANATORY NOTES
53. (3) (Cont'd)	
(b) make a specific finding that the young person is not subject to committal to an institution for the mentally deficient or the mentally ill;	See recommendation 16. The finding required by this paragraph, as that in (a), applies to both kinds of waiver: trial only and both trial and sentence. (See also paragraph 168 of the Report)
(c) in the case of an order under paragraph (a) of subsection (1), make a specific finding (i) that the young person is not suitable for treatment in any available institution or facility designed for the care and treatment of young persons, or (ii) that the safety of the community requires that the young person continue under restraint for a period longer than the court would, in case of an adjudication that he is a young offender, be authorized to order.	The requirement that there be a specific finding that the young person is not suitable for treatment in any institution available to young offenders, or that the offender should continue under restraint for a longer period, obviously applies to a waiver for trial and sentence and not to a waiver for trial only, although Recommendation 16 does not distinguish between these two conditions precedent and that contained in paragraph (b) above.

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WAIVER OF JURISDICTION

TEXT	EXPLANATORY NOTES
53. (4) No order pursuant to this section shall be valid unless it is in writing, and written reasons in support thereof are stated in the record.	This subsection implements part of recommendation 20(b) as a further check on the exercise of the discretionary power of the judge over waiver. (See also paragraph 175). Recommendation 20(b) is also to the effect that these written reasons should be forwarded to the ordinary court. This part of the recommendation has not been carried out. If it were implemented, it would mean that the judge of the ordinary court would have information before him relating to the background of the accused, information irrelevant to proof of the offence.
53. (5) An order pursuant to this section may be in Form 15 or 16, as the case may be.	

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WAIVER OF JURISDICTION

TEXT	EXPLANATORY NOTES
54. (1) The judge who makes an order pursuant to section 53 has no jurisdiction to try the young person in his capacity as a judge, justice or magistrate under any other law.	
54. (2) Where a judge, acting under section 53, deems it advisable that the proceedings continue under this Act, and the young person does not admit the facts of the information, such judge shall have no jurisdiction to continue the proceedings under this Act, and another judge shall proceed to conduct an adjudicatory hearing de novo.	"If the judge decides not to waive jurisdiction and the young person contests the charge, the fact that there has been an inquiry into background information would require the judge to relinquish jurisdiction in favour of another juvenile court judge ....." (Paragraph 174).

....

WAIVER OF JURISDICTION

TEXT

EXPLANATORY NOTES

55. Where a request or an order is made under section 52 or section 53 respectively, criminal proceedings may be commenced in the ordinary courts in accordance with any other law that is applicable, and, for the purposes of such proceedings,

(a) proceedings under this Act shall be deemed never to have been commenced, and

(b) the time that has expired during proceedings under this Act shall be deemed never to have run for the purposes of any period of limitation fixed by law in respect of the offence charged.

....

ADJUDICATION

TEXT	EXPLANATORY NOTES
56. (1) Where the court has heard the prosecutor, defendant and witnesses, it shall, after considering the matter, adjudge the information to have been proved, or dismiss it, as the case may be.	Recommendation 64. The purpose of the adjudicatory hearing is to ascertain whether the defendant has committed the acts alleged in the information. No background investigation should be made before the adjudication. The Committee contemplated that an adjudication upon the facts would not lead automatically to an adjudication that the defendant is an offender or violator. It should form instead the basis for an investigation by the court into the circumstances of the case and the background of the offender, and, following this, for some further order by the court.

....

ADJUDICATION

TEXT	EXPLANATORY NOTES
56. (2) An adjudication pursuant to subsection (1) that the information has been proved shall not be deemed to be an adjudication that a defendant is an offender or a violator, as the case may be.	This section purports merely to implement recommendation 64. In fact, there is no substantial difference between a trial under the Criminal Code and an adjudicatory hearing under the proposed Act, except that an adjudication in the former is called a conviction order, or a dismissal, while, in the latter, the adjudicatory hearing culminates in a mere finding concerning whether the facts alleged are proved or not. A positive finding is not a conviction, and it has no juridical effect other than allowing the court to enter a dispositional hearing, the purpose of which is to find how the defendant should be treated. The proposed section makes no mention of the quantum of proof that has to be discharged by the prosecution in order to secure a positive adjudication. Section 7(1) of the Criminal Code, which continues in force the rules and principles of the Common law, makes the reasonable doubt doctrine applicable to this section.

....

DISPOSITION - FINAL ADJUDICATION

TEXT	EXPLANATORY NOTES
DISPOSITION HEARING	
57. Where the judge has adjudged the information to have been proved, he shall hear evidence on the question of the final adjudication to be made in the case, and shall receive in evidence the social history report of the defendant made pursuant to section .66. of this Act, and such other relevant and material evidence as may be offered, and thereupon the judge, as he deems it advisable, may	
Absolute discharge	
(a) discharge the child or young person absolutely, where the judge is of the opinion that the appearance of the child or young person before the court is all that is necessary to ensure that he will not engage in further offences or violations;	There is a specific recommendation concerning this provision (Recommendation 66). The Committee was of the opinion that, where the fact of a court appearance itself is all that is necessary to ensure that a child or young person does not engage in further anti-social conduct, the judge should be authorized to discharge the child without a specific finding of delinquency. (Paragraph 290).

....

DISPOSITION - FINAL ADJUDICATION

TEXT	EXPLANATORY NOTES
57. (Cont'd) Provisory disposition (b) adjourn the case for a period of not longer than two months, provided that the child or young person and his parent or guardian agree to follow a specified course of action directed by the judge, which may include the measures set out in one or more of paragraph (b) of section 58, paragraph (b) of section 59, or paragraph (c) of section 60, as the case may be, or subsection (1) of section 67, or paragraph (b) of section 60, or any other activity or undertaking that the judge deems to be in the best interests of the child or young person, and order the child or young person before him for final adjudication pursuant to this section;	There is a specific recommendation concerning this provision. (Recommendation 65). This subsection should permit the courts to accomplish, with proper legal sanction, the purpose for which the adjournment sine die procedure is being employed at the present time. The Committee was of the opinion that, in the circumstances, the child and his parents should agree to a certain amount of supervision, even when no final adjudication has been made. The general provision at the end is intended to permit the judge to order the child to attend a "drop-in" centre, or to take advantage of some other neighbourhood facility.

....

DISPOSITION - FINAL ADJUDICATION

TEXT	EXPLANATORY NOTES
57. (Cont'd) Law of province to apply (c) where he is of the opinion that the evidence furnishes good grounds for believing that the defendant should be dealt with as a child or young person in need of supervision, order that the information be dismissed, and proceed instead under the applicable provincial statute intended for the protection or benefit of children or young persons, if he has jurisdiction under such provincial statute;	The Report recommends such a procedure. (See recommendation 64 and paragraphs 286 and 287). In paragraph 286 of the Report, it is stated that the court should have the power to suspend further action and proceed under provincial legislation "at any stage of the proceeding"; however, in recommendation 64, the Committee specifically recommended that this alternative be included in the disposition provisions. Provision for such an alteration of proceedings is set out in article 716 of the New York Family Court Act. This section should cover what appears to be the intention behind section 39 of the present Juvenile Delinquents Act, which provides that, "Nothing in this Act shall be construed as having the effect of repealing or over-riding any provision of any provincial statute intended for the benefit of children; and when a juvenile delinquent who has not been guilty of an act which is, under the provision of the Criminal Code an indictable offence,

....

DISPOSITION - FINAL ADJUDICATION

TEXT	EXPLANATORY NOTES
57. (c) (Cont'd)	comes within the provisions of a provincial statute, it may be dealt with either under such Act or under this Act as may be deemed to be in the best interests of such child." A provision such as this one would give the court a desirable degree of flexibility. (For a discussion on such alterations of proceedings, see the Note entitled "Rights and Rehabilitation in the Juvenile Courts", at pages 281 to 341, and particularly pages 300 to 310, in the Columbia Law Review, February 1967, Vol. 67, No. 2). Of interest is a reference to provincial law in the Prisons and Reformatories Act. Section 70 of that Act was discussed in the explanatory note opposite the provision dealing with informal adjustment. In effect, that section, which relates to Ontario, provides for informal disposition in certain cases involving an offence against the law of Canada. The court may "bind the child out to some suitable person" under the provisions of the law of Ontario, place the child in a foster home, or commit the child to a provincial institution. Section 71

....

DISPOSITION - FINAL ADJUDICATION

TEXT	EXPLANATORY NOTES
57. (c) (Cont'd)	states that, when such an order has been made, "the child may thereafter be dealt with under the law of the Province of Ontario, in the same manner, in all respects, as if such order had been lawfully made in respect of a proceeding instituted under authority of a statute of the Province of Ontario."
Final adjudication 57. (d) make an adjudication that the defendant is, as the case may be, a child offender, a young offender, or a violator.	

....

DISPOSITION

TEXT	EXPLANATORY NOTES
VIOLATOR 58. When a child or young person has been adjudged a violator, and after the judge has heard evidence on the question of the proper disposition to be made in the case, the judge may make an order of disposition that shall include one or more of the following measures:	
(a) impose a fine not exceeding twenty-five dollars, which may be paid in periodical amounts or otherwise;	The Committee recommended that the maximum fine be increased to one hundred dollars, except for an offender under fourteen years of age. (Recommendation 69, paragraph 296). Payment by instalments was endorsed by the Committee. It is not clear what the maximum fine should be for a violator; however, since it is contemplated that a violator will have committed a very minor offence, we cannot see any reason for raising the amount of the fine to be paid.

....

DISPOSITION

TEXT	EXPLANATORY NOTES
58. (Cont'd) (b) place the child or young person under the supervision of a probation officer, or any other suitable person, under conditions set out by the judge, but no such order shall exceed two years;	This wording was endorsed by the Committee in paragraph 305, where it is stated: "Another suggestion is that the provision that empowers the court to 'commit the child to the care or custody of a probation officer or of any other suitable person' should be replaced by a provision empowering the court to 'place the child under the supervision of a probation officer, or any other suitable person'. As one submission explains, the existing provision 'is not clear since it does not specify the import of the term "custody" in relationship to its duration, the effect upon parental relationships of such an order, or the responsibilities (financial and legal) of the person to whom custody is awarded'." Recommendation 73 is to the effect that the "legal effect of supervision should be clarified." It then refers to paragraph 305, which, as quoted above, states that the legal effect of the word "custody" was not clear, and therefore recommended the wording that has been used in (b) opposite, where the word "supervision" has replaced the word

....

DISPOSITION

TEXT	EXPLANATORY NOTES
58. (b) (Cont'd)	"custody". The Committee endorsed the wording used opposite. We think that recommendation 73 is in error in summarizing the gist of paragraph 305, and that, therefore, it is not necessary to clarify the legal effect of supervision. Paragraph 24 of the 1962 Report of the Sub-Committee on Juvenile Delinquency, 1962, Legislation Committee, Probation Officers Association - Ontario, states that: "A revised Act should amend the court's power to 'commit the child to the care or custody of a probation officer or of any other suitable person' and should substitute the power to 'place the child under the supervision of a probation officer or of any other suitable person'." With regard to the two year limitation period, paragraph 186 of the Report states that, "A child whose situation does not warrant committal to an institution should, we think, be subject to control for a period not exceeding two years." The transfer of probation orders is provided for elsewhere in this Act.

....

DISPOSITION

TEXT	EXPLANATORY NOTES
58. (Cont'd) (c) place the child or young person in a suitable foster home or group home, or other shelter facility, for a period not exceeding two years, with the consent of the parent or parents, or guardian, and, where there are two parents in the home of the child or young person, with the consent of both parents, but only after he has considered a pre-disposition report with respect to that child or young person;	Recommendation 12 and paragraph 149 state that a violator should not be removed from his home and placed in a foster home without the consent of his parents. The maximum period of two years conforms with the Committee's recommendation in paragraph 186 of the Report. Recommendation 61 and paragraph 279 of the Report recommend that a pre-sentence report be a pre-requisite to taking a child out of the home.

DISPOSITION

TEXT	EXPLANATORY NOTES
58. (Cont'd) (d) impose upon the child or young person such further or other conditions as may be deemed advisable and for the good of the child or young person;	The Committee made no recommendation reflecting upon this provision, which is the present 20(1)(g) of the Juvenile Delinquents Act. Against this provision, it could be said that it gives a judge legal sanction to impose any kind of condition, no matter how onerous or tyrannical; on the other hand, a certain amount of flexibility may be necessary in a vast country where there are many isolated areas and varying communities. This provision is one that should, and no doubt will, be considered critically.

....

DISPOSITION

TEXT	EXPLANATORY NOTES
58. (Cont'd)	
(e) commit the child or young person to the charge of any children's aid society, duly organized under an Act of the legislature of the province and approved by the Lieutenant-Governor in Council, or, in any municipality in which there is no children's aid society, to the charge of the superintendent, if one there be, for a period not exceeding two years, but only after the judge has considered a pre-disposition report with respect to that child or young person.	Present section 20(1)(h) of the Juvenile Delinquents Act. A "pre-sentence" report should be a pre-requisite to taking a child out of his home. (Recommendation 61, also paragraph 279). See paragraph 186 of the Report concerning the two year limitation. The superintendent referred to in this and subsequent sections is the provincial superintendent of child welfare, or similar officer.
	Provision 20(1)(i) of the Juvenile Delinquents Act is not relevant, since the Committee has recommended that a "violator" should not be sent to a training school. (Recommendation 12, paragraph 313).

* * * *

TEXT	DISPOSITION	EXPLANATORY NOTES

CHILD OFFENDER

59. When a child has been adjudged a child offender, and after the judge has heard evidence on the question of the proper disposition to be made in the case, the judge may make an order of disposition that shall include one or more of the following measures:

(a) impose a fine not exceeding twenty-five dollars, which may be paid in periodical amounts or otherwise;

The Committee recommended that the maximum fine for a child offender be kept at twenty-five dollars. (Recommendation 69 and paragraph 295).

The Committee also recommended that payment be made, at the order of the court, by instalments. (Recommendation 69, paragraph 295).

(b) place the child under the supervision of a probation officer, or any other suitable person, under conditions set out by the judge, but no such order shall exceed two years;

The new wording of this provision was endorsed by the Committee in paragraph 305. For a discussion on the point, see the notes opposite the same provision concerning "violator".

The 2-year limitation period placed on this method of disposition was recommended in paragraph 186 of the Report.

This time limit also conforms to recommendation 25 in the brief prepared by the Probation Officers Association of Ontario.

....

DISPOSITION

TEXT	EXPLANATORY NOTES
59. (Cont'd)	
(c) cause the child to be placed in a suitable foster home or group home, or other shelter facility, for a period not exceeding two years, but only after the judge has considered a pre-disposition report with respect to that child;	The Committee made no recommendation concerning parental consent. A "pre-sentence" report should be a pre-requisite to taking a child out of his home. (Recommendation 61, also paragraph 279).
(d) impose upon the child such further or other conditions as may be deemed advisable and for the good of the child;	See notes opposite this provision concerning violator.

....

DISPOSITION

TEXT	EXPLANATORY NOTES
59. (Cont'd)	
(e) commit the child to a training school for a period not exceeding three years, but only after the judge has considered a pre-disposition report with respect to that child, and only after every effort has been made to treat such child in its own home, or in a foster home, group home, or other shelter facility;	The term training school has replaced the term "industrial school." (Recommendation 75, also paragraph 312). The time limit of three years follows the Committee's recommendation 23, and also paragraph 183 of the Report. Recommendation 76 of the Report stated that "Institutional commitment should be ordered only as a last resort and the Act should be strengthened in order to give more adequate expression to this approach to the treatment of the juvenile offender." Paragraph 313 expresses the same attitude. It is intended that this provision embrace the intent of the present section 25 of the Juvenile Delinquents Act, which provides as follows: "It is not lawful to commit a juvenile delinquent apparently under the age of twelve years to any industrial school, unless and until an attempt has been made to reform such child in its own home or in the charge of a Children's Aid Society, or of a superintendent, and unless the court finds that the best interests of the child and the welfare of the community require such commitment."

....

DISPOSITION

TEXT	EXPLANATORY NOTES
59. (Cont'd) (f) commit the child to the charge of any children's aid society, duly organized under an Act of the legislature of the province and approved by the Lieutenant-Governor in Council, or, in any municipality in which there is no children's aid society, to the charge of the superintendent, if one there be, for a period not exceeding two years, but only after the judge has considered a pre-disposition report with respect to that child.	Present section 20(1)(h) of the Juvenile Delinquents Act, with added condition precedent requiring consideration of pre-disposition report. See paragraph 186 of the Report concerning the two year limitation.

....

DISPOSITION

TEXT	EXPLANATORY NOTES
YOUNG OFFENDER	
60. When a young person has been adjudged a young offender, and after the judge has heard evidence on the question of the proper disposition to be made in the case, the judge may make an order of disposition that shall include one or more of the following measures:	
(a) impose a fine not exceeding one hundred dollars, which may be paid in periodical amounts or otherwise;	The Committee recommended that the maximum fine be increased to one hundred dollars, except where the offender is under fourteen years of age. (Recommendation 69).
(b) make an order of restitution in an amount not exceeding one hundred dollars, which may be paid in periodical amounts or otherwise;	This provision is in compliance with recommendation 71 and paragraph 299 of the Report. Restitution should apply only to a person fourteen years of age or older.
(c) place the young person under the supervision of a probation officer, or any other suitable person, under conditions set out by the judge, but no such order shall exceed two years;	See notes opposite (b) in provisions concerning disposition of child offender and violator.

....

DISPOSITION

TEXT	EXPLANATORY NOTES
60. (Cont'd)	
(d) cause the young person to be placed in a suitable foster home or group home, or other shelter facility, for a period not exceeding two years, but only after the judge has considered a pre-disposition report with respect to that young person;	See notes opposite (c) concerning the disposition of a "child offender".
(e) impose upon the young person such further or other conditions as may be deemed advisable and for the good of the young person;	See notes opposite this provision concerning violator.
(f) commit the young person to a training school for a period not exceeding three years, but only after the judge has considered a pre-disposition report with respect to that young person, and only after every effort has been made to treat such young person in its own home, or in a foster home, group home or other shelter facility;	See notes opposite paragraph (e) concerning the disposition of a "child offender".

....

DISPOSITION

TEXT	EXPLANATORY NOTES
60. (Cont'd) (g) commit the young person to the charge of any children's aid society, duly organized under an Act of the legislature of the province and approved by the Lieutenant-Governor-in-Council, or, in any municipality in which there is no children's aid society, to the charge of the superintendent, if one there be, for a period not exceeding two years, but only after the judge has considered a pre-disposition report with respect to that young person.	Present section 20(1)(h) of the Juvenile Delinquents Act, with added condition precedent requiring consideration of pre-disposition report. See paragraph 186 concerning the two year limitation.

....

DISPOSITION

TEXT	EXPLANATORY NOTES
TRAFFIC OFFENDER 61. Where a child or young person has been adjudged a child offender, a young offender or a violator, as the case may be, concerning a traffic offence or violation, the juvenile court may, in lieu of or in addition to any order that it may make pursuant to section 58, 59 or 60, as the case may be, make any or all of the orders provided in paragraph (c) of section 94. .	The Committee suggested in paragraph 154 "that the disposition provisions of the Act should perhaps be amended to indicate more specifically the powers of the Juvenile Court Judge in juvenile traffic cases. Included would be the power to impose restrictions on the use of an automobile, to order suspension or revocation of a driving licence and possibly to order attendance at a driver's school". The Committee also recommended that adequate provisions be made for implementing provincial legislation relating to the assessing of demerit points, the suspension or revocation of a licence upon conviction of a driving offence or accumulation of a specified number of demerit points.

....

PROBATION ORDERS

TEXT	EXPLANATORY NOTES
CONTENTS	
62. (1) Where an order is made under this Act placing a child or young person under the supervision of a probation officer, or any other designated suitable person, such order shall include:	This provision is adapted from recommendation 12 of the "Proposals for Probation" made by the Canadian Corrections Association, dated February 1, 1967.
(a) the name of the court making the order;	
(b) the name of the court within whose territorial jurisdiction the child or young person resides or will reside;	
(c) the requirement that the child or young person be of good behaviour;	
(d) the requirement that the child or young person shall appear when called upon during the period of the probation order so that the judge may vary the order placing the child or young person on probation;	Paragraph (d) makes it clear that the court has the power to vary a probation order.

. . . .

PROBATION ORDERS

TEXT	EXPLANATORY NOTES
62. (1) (Cont'd)	
(e) the requirement that the child or young person be under the supervision of a probation officer appointed or assigned to that territorial jurisdiction, or a suitable person designated by the judge;	
(f) the requirement that the child or young person report to the probation officer or designated person in accordance with instructions given by the judge and receive visits at his home by the probation officer or designated person; and	
(g) such order may include such further conditions as the judge considers desirable in the circumstances.	Recommendation 12(b) of the "Proposals for Probation" approves of the discretionary powers available to the court under section 638(2) of the Criminal Code.

....

PROBATION ORDERS

TEXT	EXPLANATORY NOTES
CONTENTS	
62. (2) Where an order is made under this Act placing a child or young person under the supervision of a probation officer, or any other designated suitable person, the judge making the order shall explain to the child or young person the purpose and effect of such order.	Recommendation 16 of "Proposals for Probation" calls for a judge to explain the terms of a probation order to an adult; therefore, it would seem appropriate that provision be made to require a judge to explain such an order to a child or young person.

PROBATION ORDERS

TEXT	EXPLANATORY NOTES
CONTENTS	
62. (3) A copy of the probation order, signed by the judge who made the order, shall be served upon the child or young person who is the subject of the order, and upon the parent, or the parents, or the guardian of such child or young person.	This provision is in accordance with recommendation 17 of the above mentioned "Proposals for Probation" submitted by the Canadian Corrections Association. That recommendation adds: "...and that he be required to endorse the original order to the effect that a copy has been served upon him, that he understands its terms and conditions, and agrees to abide by them." The inclusion of this provision should be considered subject to the views of probation officers. Perhaps there should also be a statutory requirement, in the words of recommendation 18 of the "Proposals for Probation" of the Canadian Corrections Association brief, "that the court send a copy of the order to the probation officer of the court".

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DISPOSITION SUBSEQUENT

TEXT	EXPLANATORY NOTES
PORTABLE PROBATION ORDERS	
63. Where, under this Act, a child or young person placed on probation subsequently moves outside the jurisdiction of the judge who placed the child on probation, such judge shall notify the judge of the jurisdiction to which the child or young person is moving of the circumstances surrounding the case, and shall forward a copy of his order of disposition in the case to such judge, who will then have the same powers over the child or young person as he would have had if the case had originally been heard in his court.	Recommendation 73 of the Report states as follows: "The law should make provision for the transfer of probation orders from one court to another....." (See also paragragraph 305). A provision such as this was recommended in the brief submitted by the Probation Officers Association of Ontario. (Recommendation 27, page 12 of that brief).

....

DISPOSITION SUBSEQUENT

TEXT	EXPLANATORY NOTES
ORDER OF DISCHARGE 64. A judge, when he is of the opinion that a child or young person whom he adjudged a violator, a child offender, or a young offender, as the case may be, no longer requires the supervision of the court, may discharge such child or young person from the supervision of the court, and thereafter no further action may be taken in respect of the matter that brought the child or young person within the jurisdiction of the court.	This provision is in accordance with recommendation 28, and paragraph 186 of the Report, which endorse a principle contained in the brief submitted by the Canadian Corrections Association. This principle is contained in section 20(3) of the present Juvenile Delinquents Act, which says: "....the court may ....discharge the child on parole or release it from detention...."

....

DISPOSITION SUBSEQUENT

TEXT	EXPLANATORY NOTES
CHILD OR YOUNG PERSON BROUGHT BACK BEFORE THE JUDGE	
65. Where a child or young person has been adjudged a violator, a child offender, or a young offender, as the case may be, and is still under the supervision of the court, the judge may, by summons or warrant as provided in sections 21, 22, 23, 24 and 25 of this Act, cause the child to be brought before the court, and take any action provided by section 58 in the case of a child or young person adjudged to be a violator, or by section 59 in the case of a child adjudged to be a child offender, or by section 60 in the case of a young person adjudged to be a young offender, provided that notice of such hearing has been sent to the parent, parents or guardian, pursuant to section 26 of this Act, and provided that the court has heard evidence pursuant to section 57 of this Act.	There is no recommendation in the Report concerning this point; however, it would appear to be necessary and is implicit in section 20(3) of the present Juvenile Delinquents Act. (The U.S. Acts have a "varying order" provision: for example, Standard Family Court Act: Section 26; California: Sections 775-6; Uniform Juvenile Court Act: section 28; New York: Sections 762-766. This provision should allow a judge to send a child or young person to training school, when that child offender or young offender has proved to be unsuitable for probation. At the same time, by providing that such child "is still under the supervision of the court", no child who has been discharged by payment of fine, or who has made restitution could be brought again before the court to be subjected to further disposition.

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PRE-DISPOSITION REPORT

TEXT	EXPLANATORY NOTES
INVESTIGATION AND REPORT	
66. (1) Where, in an adjudication under this Act, a judge has adjudged the information to have been proved, he shall direct a probation officer, or other qualified person, to investigate the personal and family history and environment of the child or young person who is the subject of the information, and to submit in writing to him a pre-disposition report with respect to such child or young person based on the findings of such investigation.	The Report of the Couchiching Conference recommends the term "predisposition history". While there is no specific recommendation in the Report concerning making a pre-sentence (or "pre-disposition") report mandatory, in footnote 3, at pages 190-1, appears the following: "For these reasons, there would seem to be merit in the view that as a minimum requirement the pre-sentence report should be the subject of a specific reference in the Act." Following this comment, sections 23 and 24 of the Standard Juvenile Court Act are cited. Recommendation 22 of the brief submitted by the Probation Officers Association calls for a statutory provision requiring a social history investigation. The expression "Investigate the personal and family history and environment" are taken from 260.151 of the Minnesota Code. Section 23 of the Standard Juvenile Court Act states as follows: "....The investigation shall cover the circumstances of the offence or complaint, the social history and

....

PRE-DISPOSITION REPORT

TEXT	EXPLANATORY NOTES
66. (1) (Cont'd)	present condition of the child and family, and plans for the child's immediate care, as related to the decree...."
	It is commonly accepted that such a report should not be available to the judge until he has made his adjudication.
	Recommendation 22 of the Probation Officers' brief says that such investigation should be made "following a finding of delinquency".
	The comment following section 21 of the First Tentative Draft of the Uniform Juvenile Court Act is as follows:
	"Provisions of this kind are common. They enable the court to become fully informed before making a disposition. The information obtained is for that purpose, not for the purpose of establishing the allegations of the petition".
	Item (3) of paragraph 303 of the Report states that:
	"The probation officer should be responsible for pre-sentence investigation"; however, there was no specific recommendation for legislation to this effect.

....

PRE-DISPOSITION REPORT

TEXT	EXPLANATORY NOTES
PRIVILEGED COMMUNICATIONS 66. (2) Information given by a child or young person to a probation officer or other qualified person during the course of an investigation pursuant to sub-section (1) shall not be used or receivable in evidence against that child or young person in any criminal proceeding against him thereafter taking place.	Recommendation 4 of the "Proposals for Development of Probation in Canada" of the Canadian Corrections Association, dated February 1, 1967, states as follows: "That provision be made for ensuring that information given by an offender to a probation officer in the course of preparing a pre-sentence report, or in the course of counselling, be regarded as a privileged communication insofar as any other criminal or civil proceeding is concerned". In the notes following, it is explained that it is essential for the probation officer to work with his client in an atmosphere of trust, where the offender is actively encouraged to speak freely about his life. This brief was concerned with the probation of adults; however, presumably the same principles apply in this instance. As this section is now drafted, the offender is protected from his evidence being used against him in a <u>criminal</u> proceeding. Section 5 of the Canada Evidence Act was looked at.

....

PRE-DISPOSITION REPORT

TEXT	EXPLANATORY NOTES
66. (3) A pre-disposition report made pursuant to sub-section (1) shall be made available to the counsel or other person appearing with the child or young person, or if the child or young person appears alone, at the discretion of the judge, to such child or young person, and to counsel representing the Crown, where such counsel has been appointed, before the court has made its disposition in the case, and the counsel or other person appearing with the child or young person shall have an opportunity to cross-examine the probation officer or other qualified person who submitted such report.	There should be a right to cross-examine a probation officer on his report, which probably consists primarily of hearsay evidence, (Recommendation 62 and paragraph 283 are the relevant references in the Report). Recommendation 5 and the following comment contained in the "Proposals for Probation" submitted by the Canadian Corrections Association deal with the subject. The recommendation reads that: "The court shall, before disposition ensure (1) that the offender or his counsel have had a chance to read the report and have had an opportunity to comment upon it; (2) that the pre-sentence report be a privileged document available to (a) court, (b) accused or counsel, (c) crown attorney, (d) an institution to which the accused is sent, (e) parole service, (f) any other person designated by the court".

....

PRE-DOSPOSITION REPORT

TEXT	EXPLANATORY NOTES
66. (3) (Cont'd)	Section 5-1(2) of the Illinois Juvenile Court Act, provides as follows: "Before making an order of disposition the court shall advise the State's Attorney, the parents, guardian, custodian or responsible relative or their counsel of the factual contents and the conclusions of reports prepared for the use of the court and considered by it, and afford fair opportunity, if requested, to controvert them. The court may order, however, that the documents containing such reports need not be submitted to inspection, or that sources of confidential information need not be disclosed". At page 9 of the pamphlet entitled, "Theory and Development of Pre-sentence Reports in Ontario" prepared by G.G. McFarlane of the Ontario Probation Service, it is indicated that the practice in Ontario is to submit copies of the pre-sentence report to the Bench, to the Crown, and to the Defence. This provision, as it now stands, means that a social history report will not be available to a child or young person as of right, if he is

....

PRE-DISPOSITION REPORT

TEXT	EXPLANATORY NOTES
66. (3) (Cont'd)	unrepresented, but only at the discretion of the judge. The reason behind this limitation is the problem posed where the information contained in such a report would be damaging to the child or young person, such as where the child is illegitimate or the mother is a prostitute, to use two examples set out in paragraph 281 of the Report.
66. (4) A pre-disposition report made pursuant to subsection (1) shall be made available to, in addition to those persons mentioned in subsection (3), a training school to which the child or young person is sent, any probation officer or other designated person under whose supervision the child or young person is placed, a parole board, and any other person designated by the court.	This provision would implement part of recommendation 5 of the "Proposals for Probation" of the Canadian Corrections Association discussed above.

....

PRE-DISPOSITION REPORT

TEXT	EXPLANATORY NOTES
66. (5) A pre-disposition report made pursuant to subsection (1) shall be considered a document of the court, and shall form part of the record relating to the child or young person with whom it is concerned.	Recommendation 1(4) of the "Proposals for Probation" submitted by the Canadian Corrections Association recommends: "that the pre-sentence reports be a document of the court". This provision would ensure that the report would be considered to be part of the record, and would therefore be subject to the same protection against disclosure as the record.

....

MEDICAL, etc. REPORTS

TEXT

67. (1) A judge may order that a child or young person who is the subject of an information be examined by a physician, psychiatrist, psychologist, or by qualified persons at a venereal disease control clinic, but in no case shall such an examination be ordered prior to the adjudication that the information has been proved, except where a child or young person is considered so mentally ill as to be unable to instruct counsel, or is being held in detention and a medical examination is ordered to ensure that he is not a carrier of a communicable disease.

EXPLANATORY NOTES

While there is no formal recommendation in the Report concerning medical examinations, footnote 4 on page 191 of the Report states as follows: "Examination of the child by a psychiatrist, psychologist or physician will obviously be necessary in certain cases. The authority of the court to order the appropriate examinations, including tests for venereal disease, should be stated expressly in the Act. At the same time, the Act should make it clear that the court has no power to order any such examination, other than possibly a routine medical examination prior to establishing that the child has committed the offence alleged against him".

In paragraph 265 of the Report appears the following statement: "Until the child is found to have committed the act complained of, the state should have no right to infringe the child's interests in preserving his privacy except in the most urgent cases. A child considered so mentally ill or feebleminded as to be unable to instruct counsel must be examined by scientific

....

MEDICAL, etc. REPORTS

TEXT	EXPLANATORY NOTES
67. (1) (Cont'd)	experts. Again, a child held in detention will have to be given a physical examination to ensure that he is not a carrier of contagious diseases". Authority to order such examination is provided in the Standard Juvenile Court Act, section 22 and, for example, in section 48.24 of the Wisconsin Children's Code.

MEDICAL, etc. REPORTS

TEXT	EXPLANATORY NOTES
TREATMENT	
67. (2) Where an examination conducted pursuant to subsection (1) discloses that the child or young person being examined is in need of treatment, a judge may order the child or young person to be so treated.	This provision is solely for discussion purposes. Section 22 of the Standard Juvenile Court Act has such a provision. The Report of the Justice Committee made no recommendation in this respect. It is questionable whether this subsection should be included in the Act. It would have the effect of forcing medical, psychiatric or psychological treatment on a person without his consent, and without his having been adjudged an offender, etc. This might be accomplished informally as a condition of probation. While the advisability of including this provision is questionable, it was thought that the best way to focus attention on the point was to include it in this discussion draft.
67. (3) For the purposes of subsection (1), the judge may order that the child be kept in detention for a period of 10 days.	Recommendation 6 of the "Proposals for Probation" (Canadian Corrections Association) deals with this point. The ten day limitation period is purely arbitrary.

.....

MEDICAL, etc. REPORTS

TEXT	EXPLANATORY NOTES
CONFIDENTIALITY	
67. (4) All reports received by the court pursuant to subsection (1) shall be disclosed to the counsel of the child or young person who is the subject of such reports, and, if the child or young person is represented by a person other than legal counsel, that person, even if he be a parent of the child or young person, shall be permitted to see such reports if he so requests, and the counsel or other person appearing with the child or young person shall have an opportunity to cross-examine any person who has submitted a report based on an examination conducted pursuant to subsection (1).	That part of this provision providing for the disclosure of the report is in accordance with recommendation 62 of the Report. The point is discussed in paragraphs 281 and 283. The Committee contemplated that the counsel of the child or young person would use his discretion in deciding how much of the information should be revealed to the child or his parents.

....

MEDICAL OBSERVATION

TEXT	EXPLANATORY NOTES
MEDICAL OBSERVATION IN CUSTODY	
68. A judge who has received an information with respect to any child or young person pursuant to section 20, may, at any time the child or young person is before him, remand the child or young person, by order in writing, to such custody as the judge directs for observation for a period not exceeding 30 days where, in his opinion, supported by the evidence of at least one duly qualified medical practitioner, there is reason to believe that the child or young person is mentally ill.	Adapted from section 451(c)(i) of the Criminal Code. At page 15 of the Report from the Couchiching Conference appears the following statement: "In cases of children who are so disturbed that they require observation of a nature that is not adequate in the regular detention setting, some provision should be made to recommend that the observation wards of hospitals be used for detention. Similarly, there is provision in the Criminal Code for adults to be placed in hospitals for treatment by the Court, but there is no such provision for juveniles. As a result some children who need psychiatric treatment in a hospital setting are sent home or sent to a training school when either may be extremely detrimental to the child."

....

MENTAL ILLNESS AT TIME OF TRIAL

TEXT	EXPLANATORY NOTES
69. (1) A judge who has received an information with respect to any child or young person pursuant to section 20, may, at any time before he has adjudged the information to have been proved, or before he has dismissed it, where it appears that there is sufficient reason to doubt that the accused is, on account of mental illness, capable of conducting his defence, direct that an issue be tried whether the accused is then, on account of his mental illness, unfit to stand the hearing of the charges against him.	Adapted from section 524 of the Criminal Code.
(2) The judge shall thereupon try the issue and render a finding thereon.	

MENTAL ILLNESS AT TIME OF TRIAL

TEXT

EXPLANATORY NOTES

69. (3) Where the finding is that the child or young person is not unfit on account of mental illness to stand the hearing of the charges against him, the judge shall proceed as if no such issue had been directed.

(4) Where the finding is that the child or young person is unfit on account of mental illness to stand the hearing of the charges against him, the judge shall order that the child or young person be kept in detention until the pleasure of the Lieutenant-Governor is known, and any plea that has been pleaded shall be set aside.

(5) No proceeding pursuant to this section shall prevent the child or young person from being proceeded against subsequently.

....

PROBATION OFFICERS

TEXT	EXPLANATORY NOTES
70. Every probation officer duly appointed under the provisions of this Act or of any provincial statute has in the discharge of his or her duties as such probation officer all the powers of a constable, and shall be protected from civil actions for anything done in bona fide exercise of the powers conferred by this Act.	Present Section 30.

PROBATION OFFICERS

TEXT	EXPLANATORY NOTES
71. It is the duty of a probation officer to make such investigation as may be required by the court, to be present in court, to furnish to the court such information and assistance as may be required, and to take such charge of any child or young person, before or after trial, as may be directed by the court.	Present Section 31. The provision concerning the presence of the probation officer "in order to represent the interests of the child where the case is heard" has been omitted, in view of the remarks of the Committee in paragraph 247, where, when speaking of the case presented for the child by the probation officer, the Committee quoted this provision with disapproval, saying, "The probation officer's primary responsibility is to the court, not to the child", and "experience has shown that one person should not be expected to perform inconsistent functions". The provision contained in this Act according to which a child or young person may be represented by counsel, or assisted by a parent, takes the place of the deleted provision of section 31. In paragraph 303(3) of the Report, the Committee specifically mentioned the responsibilities of the probation officer: pre-sentence investigation, and personal supervision of the child, by way of immediate supervision or as aftercare.

....

PROBATION OFFICERS

TEXT	EXPLANATORY NOTES
71. (Cont'd)	These duties are covered in this draft, with the exception of provisions concerning aftercare. Duties concerning aftercare have been purposefully excluded in the present draft from the functions of the juvenile court. There may be debate on this point.

PROBATION OFFICERS

TEXT	EXPLANATORY NOTES
72. Every probation officer however appointed is under the control and subject to the direction of the judge of the court with which such probation officer is connected, for all purposes of this Act.	Present Section 32.

PROBATION OFFICERS

TEXT	EXPLANATORY NOTES
73. Where no probation officer has been appointed under provincial authority, and remuneration for a probation officer has been provided by municipal grant, public subscription or otherwise, the court shall appoint one or more suitable persons as probation officers.	This is the present section 29, with the omission of the words "with the concurrence of the Juvenile Court Committee". It is reproduced here for discussion purposes, and can be either retained or dropped.

EVIDENCE

TEXT	EXPLANATORY NOTES
74. For the purposes of this Act a person shall be deemed to have been of a given age where the anniversary of his birthday, the number of which corresponds to that age, is fully completed, and until then to have been under that age.	This provision is taken word for word from section 3(1) of the Criminal Code. Section 25 of the new Interpretation Act (assented to July 7, 1967) is as follows: "(9) A person shall be deemed not to have attained a specified number of years of age until the commencement of the anniversary, of the same number, of the day of his birth." Section 74 of the discussion draft is redundant, in view of section 25(9) of the new Interpretation Act. It could be omitted.

....

EVIDENCE

TEXT	EXPLANATORY NOTES
75. (1) In any proceedings to which this Act applies the production of a birth certificate or a copy thereof purporting to be in the name of the child or young person and purporting to be certified under the hand of the proper officer or person in whose custody the records are held, or an entry or record of an incorporated society or its officers who have had the control or care of a child or young person at or about the time the child or young person was brought to Canada is prima facie evidence of the age of the child or young person, if the entry or record was made before the time when the offence is alleged to have been committed.	Recommendation 57. "The law should make adequate provision for a clear and simple method of proving the age of a child or young person who is before the juvenile court". The second part of 75(1) is taken from 565(1) of the Criminal Code. Section 24 of the Canada Evidence Act would apply. This section negates the necessity of seals and signatures on certified documents.
75. (2) Section 28 of the Canada Evidence Act does not apply to this section.	That section requires that the party producing a copy of a document must give notice that he intends to do so.

....

EVIDENCE

TEXT	EXPLANATORY NOTES
76. In the absence of other evidence, or by way of corroboration of other evidence, a judge of a juvenile court may infer the age of a child or young person from his appearance.	This paragraph is taken from section 565(2) of the Criminal Code.

EVIDENCE

TEXT

77. (1) Service of any document pursuant to this Act, may be proved

(a) where service thereof has been made by a peace officer or other person designated by the judge, by the oral evidence, given under oath, of such peace officer or other person, or by his affidavit sworn before any commissioner or other person authorized to take affidavits;

(b) where service thereof may be made by mail, by oral evidence under oath, or by an affidavit, sworn before any commissioner or other person authorized to take affidavits, of the officer of the court whose duty it is to send such documents, setting out that the document was sent by mail on a named date to the person to whom it was directed, and identifying a true copy of such document.

EXPLANATORY NOTES

Adapted from section 26(3) of the Canada Evidence Act.

....

EVIDENCE

TEXT	EXPLANATORY NOTES
77. (2) Where proof is offered by affidavit pursuant to this section, it is not necessary to prove the official character of the person making the affidavit if that information is set out in the body of the affidavit.	Section 26(4) of the Canada Evidence Act.

EVIDENCE

TEXT	EXPLANATORY NOTES
CHILD'S OATH MAY BE DISPENSED WITH	
78. (1) When in a proceeding before a juvenile court a child of tender years who is called as a witness does not, in the opinion of the judge, understand the nature of an oath, the evidence of such child may be received, though not given under oath, if, in the opinion of the judge, such child is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth.	Present section 19(1) of the Juvenile Delinquents Act; identical to section 16(1) of the Canada Evidence Act.
78. (2) No case shall be decided upon such evidence alone, and it must be corroborated by some other material evidence.	The wording of present section 19(2) of the Juvenile Delinquents Act is not reproduced because it states that "no person shall be convicted". Such a wording is not adequate in view of the fact that it would apply to adult trials only where conviction may be made under the proposed Act. It would create difficulties as to proceedings against children and young persons, since there is no conviction in such cases. The wording of present section 16(2) of the Canada Evidence Act has been adopted instead, word for word.

....

EVIDENCE

TEXT	EXPLANATORY NOTES
79. It is not necessary to its validity that any seal should be attached or affixed to any information, summons, warrant, conviction order, or other process or document filed, issued or entered in any proceeding had or taken under this Act.	Present section 18 of the Juvenile Delinquents Act.

APPEAL

TEXT

80. (1) The Attorney General, or any child or young person concerning whom a decision has been made by a juvenile court judge, may appeal to the court of appeal upon any ground that involves a question of law alone, or, with leave of the court of appeal or a judge thereof, upon any ground that appears to that court to be a sufficient ground of appeal.

EXPLANATORY NOTES

Recommendation 60 states:

"The Crown and the accused should have a direct right of appeal to the court of appeal on any ground of appeal that involves a question of law alone and, with leave of the court of appeal, on any other ground that appears to the court to be sufficient."

In paragraphs 273 to 275, the Committee explained that it was of the opinion that the present appeal provisions, contained in section 37 of the present Act, were too restricted. The appeal allowed is to a supreme court judge, who, in his discretion, may refuse leave to appeal; there is no appeal as of right.

As a comment on its recommendation on the question of appeal, the Committee stated, at the end of paragraph 275:

"Adoption of the scheme we propose would permit important questions of law to be decided by the one tribunal whose pronouncements apply throughout the province. It would help to ensure that the juvenile court performs its proper role:

....

APPEAL

TEXT	EXPLANATORY NOTES
80. (1) (Cont'd)	the administration of a system of individualized justice according to law." Special appeal provisions are found in the Combines Investigation Act, which is also a special criminal statute. Sections 31(2a),(2b) and (2c) provide for appeals against orders of prohibition. Section 31(2a) provides for the appeal to the appropriate court and continues, "..upon any ground that involves a question of law, or, if leave to appeal is granted by the court appealed to within twenty-one days after the judgment appealed from is pronounced or within such extended time as the court appealed to or a judge thereof for special reasons allows, on any ground that appears to that court to be a sufficient ground of appeal."
80. (2) The Attorney General or any child or young person concerning whom a decision has been made by a juvenile court judge, may appeal from a decision of the court of appeal to the Supreme Court of Canada on any question of law upon which a judge of the court of appeal dissents, or on any question of law if leave to appeal is granted by the Supreme Court of Canada.	This sub-section follows generally the provisions of section 597 and 598 of the Criminal Code relating to appeals to the Supreme Court of Canada.

....

APPEAL

TEXT	EXPLANATORY NOTES
80. (3) Subject to sub-section (1), the provisions of Part XVIII of the Criminal Code apply mutatis mutandis to appeals under this section.	The Committee made no recommendation with respect to procedure in appeals. Part XVIII of the Criminal Code is that part which deals with "appeals - indictable offences". Section 37(1) of the present Act includes the following provision: "....and the provisions of the Criminal Code relating to appeals from conviction on indictment apply to such appeal, save that the appeal shall be to a supreme court judge instead of to the court of appeal, with a further right of appeal to the court of appeal by special leave of that court." Section 31(2c) of the Combines Investigation Act, referred to above, provides as follows: "Subject to sub-section (2a) and (2b), the provisions of Part XVIII of the Criminal Code apply mutatis mutandis to appeals under this section." This provision has been adopted in this discussion draft. It was drafted in 1960 and represents a more recent approach to the problem than does section 37 of the Juvenile Delinquents Act.

....

APPEAL

TEXT

80. (3) (Cont'd)

EXPLANATORY NOTES

Part XVIII of the Criminal Code includes sections 581 to 601.

One possible difficulty is foreseen: the sections in Part XVIII refer to "convictions" (e.g. section 592), and, "A person who is convicted of an indictable offence" (section 597, referring to appeals to the Supreme Court of Canada).

There is really no "conviction" under the Children and Young Persons Act. The judgment or decision of the court is referred to as an "adjudication", and the court would find the child or young person a "violator", a "child offender", or a "young offender".

It is considered that this situation is covered by the expression "mutatis mutandis".

See section 81(2) of this discussion draft.

....

EFFECTS OF ADJUDICATION

TEXT

CIVIL EFFECTS OF ADJUDICATION

81. (1) Where a child or young person has been adjudged a "violator", a "child offender", or a "young offender", as the case may be, he shall not be regarded as having been convicted of a criminal offence for the purpose of determining whether he has a previous conviction, or is otherwise subject to disabilities by reason of conviction for a criminal offence, and he may reply accordingly to any inquiry concerning previous convictions.

EXPLANATORY NOTES

Recommendation 13 states that:

"The law should make clear that a finding that a person is a 'child offender' or 'young offender' is not to be regarded as a conviction for a 'criminal offence' for the purpose of determining whether a person has a previous conviction or is otherwise subject to disabilities by reason of conviction for a criminal offence".

The last sentence in paragraph 150 of the Report is exactly the same, except that it begins, "The statute should make clear". The last clause, "and he may reply accordingly to any inquiry concerning previous convictions", was not part of the recommendation. This clause and the similar provision concerning the sealing of records (below) are sometimes criticized as providing for a "legalized prevarication", which presents a quandary to the lawmakers. Aidan R. Gough, in his article entitled, "The Expungement of Adjudication Records of Juvenile and Adult Offenders:A Problem of Status", put it this way, at page 189 of his article:

....

EFFECTS OF ADJUDICATION

TEXT

81. (1) (Cont'd)

EXPLANATORY NOTES

".....In commending Governor Rockefeller's veto of the New York Bill, The District Attorney of Manhattan is reported to have said that the bill was unrealistic because 'it permitted a person to lie about his former conflict with the law'. It is perhaps hard to articulate but there is - to the writer's mind, at least - something objectionable about legalized prevarication even though one can rationalize the point by the worthiness of the end. It impairs the law's integrity by creating a fiction where none is needed. To only allow the offender to deny his offence leaves the burden on him; to restrict the questioning about his offence places the focus where it belongs, on the attitudes of society".

This section should be considered together with section 82. The two sections are really alternative approaches to the same issue. On the whole, it is submitted that section 82 is preferable, since it does not involve "legalized prevarication", and since, in the words of Gough,

....

EFFECTS OF ADJUDICATION

TEXT	EXPLANATORY NOTES
81. (1) (Cont'd)	"To only allow the offender to deny his offence leaves the burden on him; to restrict the questioning about his offence places the focus where it belongs, on the attitudes of society." Section 654 of the Criminal Code, dealing with the civil disabilities of convicted persons, is an example of this kind of legislation being included in a criminal statute. Of course section 81 has a broader application than section 82.
81. (2) Notwithstanding sub-section (1), where a child or young person has been adjudged a "violator", or "child offender", or a "young offender" under this Act, such adjudication shall be deemed a conviction where provisions in the Criminal Code are made to apply <u>mutatis mutandis</u> to this Act.	The procedure in the case of appeals is to be that contained in Part XVIII of the Code, i.e., the procedure in appeals in indictable cases. The word "conviction" is, of course, used in this Part. See section 80(3) of this draft.

....

EFFECTS OF ADJUDICATION

TEXT	EXPLANATORY NOTES
EMPLOYERS - FORBIDDEN QUESTIONING	
82. (1) It is unlawful for any employer engaged upon or in connection with the operation of any work, undertaking, or business that is within the legislative authority of the Parliament of Canada to question any applicant for employment, or any of his referees, on any matter concerning the arrest of such applicant relating to proceedings under this Act, or on any other matter concerning such applicant with respect to proceedings under this Act.	Recommendation 84 concerns this point and is as follows: "Employers who are subject to Parliament in respect of employment practices should be prohibited from questioning an applicant for employment or his referees on the question whether he has been found delinquent during his childhood." In paragraph 342, the Committee stated as follows: "If it were thought to be desirable not to prejudice a person's employment opportunities because of his juvenile court record the remedy would appear to be this: an employer should be prohibited from questioning an applicant or his referees on that matter. The law already has the example of fair employment practices legislation which prohibits questions relating to race or religion. However, it is debatable whether such a prohibition by Parliament in the Act could constitutionally apply to employers other than those subject to Parliament in respect of employment practices. We recommend, in any event, that such federal legislation be introduced for enactment by Parliament." ....

EFFECTS OF ADJUDICATION

TEXT	EXPLANATORY NOTES
82. (1) (Cont'd)	The Committee then went on to say that it did not think the problem could ever be solved by legislation. In drafting this provision, the Canada Labour (Standards) Code, Ch.38, 13-14 Elizabeth II was looked at. The words "employer" and "employee" used in that Act are defined generally in section 2(d) and (e); however, section 3(1), concerning the application of the Act, reads as follows: "This Act applies to and in respect of employees who are employed upon or in connection with the operation of any work, undertaking or business that is within the legislative authority of the Parliament of Canada....." The Canada Labour Code, however, stands in a different constitutional light from the present draft Act. Since the Code deals with labour and not with crime, the jurisdiction of Parliament is limited to federal works and undertakings. The present draft Act, on the other hand, relates to the criminal law over which Parliament has express jurisdiction under head 27 of section 91 of the British North America Act. .....

EFFECTS OF ADJUDICATION

TEXT

82. (1) (Cont'd)

82. (2) Everyone who contravenes this section is guilty of an offence punishable on summary conviction.

EXPLANATORY NOTES

Section 82 creates a criminal offence in the context of a criminal enactment, and the qualification suggested by the Committee, and incorporated in section 82(1) of the discussion draft, is likely unnecessary and can be omitted. Section 367(a) of the Criminal Code, which makes it an offence for an employer to refuse to emply a member of a trade union, is an example in point. The issue is a complex one because widespread employment practices are involved. An employer has ordinarily the right to require an educational and employment history from an applicant for employment and the applicant is often requested to state the places where he worked or attended school: the fact that an applicant was committed to training school is likely to be revealed by such a history.

....

RECORDS

TEXT	EXPLANATORY NOTES
FINGERPRINTS AND PHOTOGRAPHS	
83. (1) The Identification of Criminals Act shall not apply to any child or young person who is apprehended by the police, unless the judge so orders.	The Report contains no recommendation or discussion on this subject. Most of the American legislation, or models thereof, studied have a provision similar to this. Examples are: Standard Family Court Act Section 33 ..... "Without the consent of the judge neither the fingerprints nor a photograph shall be taken of any child taken into custody, unless the case is transferred for criminal proceedings." OREGON 419.585 "Neither the fingerprints nor a photograph of a child taken into custody for any purpose under ORS. 419.472 to 419.587 shall be taken except in the following circumstances: (1) With the consent of the juvenile court; or (2) Where a child has been remanded to the court handling criminal actions; or (3) Where a child has been placed in the legal custody of a state institution".

....

RECORDS

TEXT	EXPLANATORY NOTES
83. (1) (Cont'd)	Kansas Statutes Annotated - Supplement - 1965 - Juvenile Code 38.815. "(f) Neither the fingerprints nor a photograph shall be taken of any child less than eighteen (18) years of age, taken into custody for any purpose, without the consent of the judge of the court having jurisdiction; and when the judge permits the fingerprinting of any such child, the prints shall be taken as a civilian and not as a criminal record".

....

RECORDS

TEXT	EXPLANATORY NOTES
FINGERPRINTS AND PHOTOGRAPHS	
83. (2) Sub-section (1) shall not apply where the judge has waived his jurisdiction with respect to a young person pursuant to section 53 of this Act, or where a young person or the Attorney General has required that the young person be tried in the ordinary court pursuant to section 52 of this Act.	The purpose of this sub-section is to make a young person who is being tried in an adult court subject to all the procedures applicable to adult cases. Section 427 of the Criminal Code, however, provides that the trial of a person under 16 years of age shall take place without publicity. (This section should be amended to refer to persons under 17).

RECORDS

TEXT

CONTENTS OF RECORD

84. The clerk of the court shall keep a record of each case, which shall include the warrant, summons, information, any report, notices, transcripts, and all other documents and papers originating with the court and pertaining to the proceedings in the case.

EXPLANATORY NOTES

The pre-disposition report is now, by a separate subsection, made part of the record, as recommended in the case of adults in the "Proposals for Probation", submitted by the Canadian Corrections Association. The reason for this proposal was to ensure that the report would be considered to be part of the record, and therefore subject to the same protection against disclosure as the record. The provisions overlap to that extent.

The Oregon Statute, in section 419.567, excludes these reports in the following words:

"....but excluding reports and other material relating to the child's history and prognosis".

The same section in the Oregon Statute defines the composition of the records as follows:

"The clerk of the court shall keep a record of each case, including therein the summons and other process, the petition and all other papers in the nature of pleadings, motions, orders of the court and other papers filed with the court, ..."

....

RECORDS

TEXT

84. (Cont'd)

EXPLANATORY NOTES

The subject of juvenile court records is dealt with in the Report in Recommendation 85, and paragraph 343.

Recommendation 85 states:

"Juvenile court records should be available for use in disposing of a case against an individual who, having a juvenile court record, is subsequently convicted of an offence in the adult court".

In paragraph 343, the Committee discussed the different considerations with regard to making a juvenile court record available to prospective employers and to a court; however, its only recommendation concerning records was that quoted above. (Recommendation 85).

Section 574 of the Criminal Code now provides for the method of proving a previous conviction, which may be proved either by producing a certificate or a copy of the conviction only.

....

RECORDS

TEXT	EXPLANATORY NOTES
RECORDS - Confidential 85. The record in any case shall be kept separate from the records of adults and shall be withheld from public inspection, but shall be open to inspection by the child or young person who is the subject of the record, by the counsel or the parents or guardian of such child or young person, by any counsel appointed by the Attorney General, by any other juvenile court judge upon subsequent adjudication, or by any court upon subsequent conviction, for the purpose of making a disposition or passing a sentence, and, with the consent of the judge, by persons, institutions and agencies having a legitimate interest in the supervision or treatment of such child or young person, or by persons having a legitimate interest in the work of the court.	There is no recommendation in the Report to cover this provision. If the pre-disposition report is considered part of the record, there is a discrepancy. It is, in another provision, to be available to the child or young person only at the discretion of the judge. In the provision opposite, the record is available as of right to the child or young person. Most of the American legislation, and models thereof, studied have a provision concerning the confidentiality of juvenile court records. Section 33 of both the Standard Juvenile Court Act and the Standard Family Court Act provides as follows: "These records shall be open to inspection by the parties and their attorneys, by an institution or agency to which custody of a child has been transferred, by an individual who has been appointed guardian; with the consent of the judge, by persons having a legitimate interest in the proceedings; and, pursuant to rule or special order of the court, by persons conducting pertinent research studies, and by

....

RECORDS

TEXT	EXPLANATORY NOTES
85. (Cont'd)	persons, institutions, and agencies having a legitimate interest in the protection, welfare, or treatment of the child".
	Section 827 of the Californis Code is as follows:
	"A petition filed in any juvenile court proceeding and any reports of the probation officer filed in any such case may be inspected only by court personnel, the minor who is the subject of the proceeding, his parents or guardian, and the attorneys for such parties, and such other persons as may be designated by the judge of the juvenile court".

....

RECORDS

TEXT	EXPLANATORY NOTES
RECORDS - Sealing	
86. (1) In any case where an information has been received by a juvenile court judge with respect to any person under this Act, such person may, five years or more after the jurisdiction of the juvenile court judge has terminated with respect to such person, or five years or more after such person has been released from a training school where he has been placed as a result of the adjudication and disposition with respect to an information received by a juvenile court judge, bring a motion before that juvenile court judge requesting the sealing of the records relating to his case, including the records of the court, records of arrest, and any other records in the custody of persons, agencies, or public officials, including law enforcement agencies, whom the person alleges in his notice of motion to have custody of such records.	This section has been included here for discussion purposes only. It is submitted that, in view of section 85 providing for the confidentiality of records, it is not necessary. There is no specific recommendation concerning the expunging or sealing of records. In paragraph 343, the Committee did discuss the desirability of barring prospective employers from inspecting the records of juveniles. With regard to the draft of this provision, section 781 of the California Juvenile Court Law has been used as a precedent. The first part of section 781, comparable to the provision opposite, is as follows: "In any case in which a petition has been filed with a juvenile court to commence proceedings to adjudge such person a dependent child or ward of the court or in any case in which a person is cited to appear before a probation officer or is taken before a probation officer pursuant to section 626, such person, or the county probation officer, may, five years or more after the jurisdiction

....

TEXT	EXPLANATORY NOTES
86. (1) (Cont'd)	of the juvenile court has terminated as to such person, or in a case in which no petition is filed, five years or more after such person was cited to appear before a probation officer or was taken before a probation officer pursuant to section 626, petition the court for sealing of the records, including records of arrest, relating to such person's case, in the custody of the juvenile court and probation officer and such other agencies, including law enforcement agencies, and public officials, as petitioner alleges, in his petition, to have custody of such records".

....

TEXT	EXPLANATORY NOTES
RECORDS - Sealing	
86. (2) Where a juvenile court judge receives a notice of motion pursuant to sub-section (1), he shall notify the crown attorney of the territorial jurisdiction in which he is located, a probation officer, and any other person having evidence relevant to the matter, and he shall set a date for the hearing of the motion to determine whether the person making the motion has, since the termination of the court's jurisdiction with respect to such person, or since the release of such person from training school, been found to be a child offender or a young offender within the meaning of this Act, or has been convicted of any indictable or summary conviction offence under any other Act, and whether such person has lived a law abiding life to the satisfaction of the judge.	The corresponding part of section 781 of the California law is as follows: "The court shall notify the district attorney of the county and the county probation officer, if he is not the petitioner of the petition, and such district attorney or probation officer or any of their deputies or any other person having relevant evidence may testify at the hearing on the petition".

....

RECORDS

TEXT	EXPLANATORY NOTES
RECORDS - Sealing 86. (3) If, after a hearing held pursuant to subsection (2), the juvenile court judge is satisfied that the person who brought the motion is living a law abiding life and has been rehabilitated, the juvenile court judge shall order sealed all records, papers, and exhibits relating to such person that are in the custody of the juvenile court, and all other records relating to such person that are in the custody of such other persons, agencies and officials as are named in the order.	The corresponding part of section 781 of the California law is as follows: "If, after hearing, the court finds that since such termination of jurisdiction or action pursuant to section 626, as the case may be, he has not been convicted of a felony or of any misdemeanor involving moral turpitude and that rehabilitation has been attained to the satisfaction of the court, it shall order sealed all records, papers, and exhibits in such person's case in the custody of the juvenile court, including the juvenile court record, minute book entries, and entries on dockets, and other records relating to the case in the custody of such other agencies and officials as are named in the order".

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RECORDS

TEXT	EXPLANATORY NOTES
RECORDS - Sealing 86. (4) After an order has been made pursuant to sub-section (3), the proceedings with respect to which the order is made shall be deemed never to have occurred, and such person may reply accordingly to any inquiry concerning the proceedings with respect to which the records have been ordered sealed.	The corresponding part of section 781 of the California law is as follows: "Thereafter the proceedings in such case shall be deemed never to have occurred, and such person may properly reply accordingly to any inquiry about the events, records of which are ordered sealed". For a discussion concerning "legalized prevarication", see the note opposite section 81(1) of this draft.

RECORDS

TEXT	EXPLANATORY NOTES
RECORDS - Sealing	
86. (5) The juvenile court judge shall send a copy of the order to each person, agency and official named in the order, and each such person, agency, and official shall seal the records in his or its custody, as directed by the order, and shall advise the court of his or its compliance, and shall seal the copy of the court's order for the sealing of records that he or it received.	The corresponding part of section 781 of the California law is as follows: "The court shall send a copy of the order to each agency and official named therein, and each such agency and official shall seal records in its custody as directed by the order, shall advise the court of its compliance, and thereupon shall seal the copy of the court's order for sealing of records that it or he received".

RECORDS

TEXT	EXPLANATORY NOTES
RECORDS - Sealing	
86. (6) Any person who receives an order pursuant to sub-section (5) may be adjudged in contempt of court if he refuses or fails to comply with such order within a reasonable time after receiving such order.	Section 38-815(h) of the Kansas Statutes Annotated - Supplement 1965 - after providing for the expunging of records, provides: ".....and, if he shall refuse or fail to do so within a reasonable time after receiving such order, he may be adjudged in contempt of court and punished accordingly". There is no provision concerning contempt in the California law.

RECORDS

TEXT	EXPLANATORY NOTES
RECORDS - Sealing 86. (7) The person who is the subject of records sealed pursuant to this section may apply to the superior court of criminal jurisdiction for an order that a named person be permitted to inspect the records sealed pursuant to this section, and the superior court of criminal jurisdiction may so order, but otherwise such records shall not be open to inspection.	The corresponding part of section 781 of the California law is: "The person who is the subject of records sealed pursuant to this section may petition the superior court to permit inspection of the records by persons named in the petition, and the superior court may so order. Otherwise such records shall not be open to inspection". Aidan R. Gough, in his article entitled, "The Expungement of Adjudication Records of Juvenile and Adult Offenders: A Problem of Status" comments on this provision as follows: "The statute uniquely provides that the person whose records are sealed may at a later time petition the court to grant the right of inspection to persons named in the application, apparently to effectuate security clearances and other investigations for high risk employment". ....

RECORDS

TEXT	EXPLANATORY NOTES
RECORDS - Sealing 86. (8) An application to a superior court of criminal jurisdiction made pursuant to subsection (7) shall be made in the manner directed by the rules of that court.	The sealing and expungement of records is discussed in the article by Aidan R. Gough, mentioned above, which was published in the Washington University Law Quarterly, Vol. 1966, No. 2, April 1966, p. 147-190, and was reprinted by the Children's Bureau in Washington. This subject is also discussed at pages 286 to 289 of the Note in the Columbia Law Review of February 1967, vol. 67, No. 2. It is of interest to note the recommendations concerning juvenile court records contained in the Report of the Ontario Legislature's Select Committee on Youth, released in March 1967. They are as follows, at page 273 of the Report: "The Select Committee recommends that: 248. The use of juvenile records in adult courts be kept to an absolute minimum, consistent with the principle that juvenile court charges or appearances should not influence the sentencing process in adult courts.

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RECORDS

TEXT

86. (8) (Cont'd)

EXPLANATORY NOTES

249. Under no circumstances should juvenile records be revealed to any business agencies for the use of employer personnel or credit purposes. That any persons using such information for any such purpose should be punishable by law.

250. Juvenile records be expunged after five years of delinquent free behaviour".

The Committee did not discuss possible methods of accomplishing this end.

SAFEGUARDS

TEXT	EXPLANATORY NOTES
INCARCERATION IN ADULT INSTITUTIONS	
87. (1) Subject to subsection (2), no child or young person shall be committed to a penal institution where adult prisoners are confined.	With regard to this matter, the Fauteux Report commented as follows (at page 27): "Young Offenders It is an astonishing fact that under the present law in Canada, it is possible for a child under the age of sixteen to be convicted of a criminal offence in an adult court and be sentenced to a lengthy term of imprisonment in a penitentiary. This can happen in any of the many areas where the Juvenile Delinquents Act is not in force. Some provincial authorities have been authorized by the Prisons and Reformatories Act to make limited efforts to deal with this class of offender but the situation in Canada is, however, far from satisfactory. The report of the Commissioner of Penitentiaries for the fiscal year ending March 31, 1955, discloses that during that year 14 persons under the age of sixteen years were admitted to Canadian penitentiaries. Such a situation is permitted by the penal system of Canada. In our opinion legislative changes are needed

.../...

TEXT	EXPLANATORY NOTES
87. (1) (Cont'd)	immediately to provide that no person under the age of sixteen years shall be committed to penal institutions where adult prisoners are confined, and we recommend accordingly".

SAFEGUARDS

TEXT	EXPLANATORY NOTES
87. (2) Subsection (1) does not apply where a judge of a juvenile court has made an order pursuant to section 53(1)(a) of this Act in respect of a young person over the age of sixteen years.	The criterion for the waiver of jurisdiction to an adult court for both trial and sentence is that the young person is not suitable for treatment in any institution available to young offenders, or that the offender should continue under restraint for a period longer than the juvenile court is authorized to order. (Recommendation 16). Implied in this criterion is the idea that the young offender would not be suitable for custody in any place other than an institution for adult prisoners. This section leaves hanging the question of the institutions to which are to be sent young persons under the age of sixteen who have been waived to the adult court for both trial and sentence.

LEGAL RELATIONSHIPS

TEXT	EXPLANATORY NOTES
88. A foster parent or any other person with whom a child or young person has been placed by a juvenile court judge under the provisions of this Act has the right to the physical possession of the child or young person, and the right and duty to provide for the care, protection, training and education, and the physical, mental and moral welfare of the child or young person, subject to such conditions and limitations as the order of the juvenile court judge may contain, and to the remaining rights and duties of the parents of such child or young person.	The Committee made no specific recommendation concerning the legal relationship between foster parent, court and natural parent; however, it did refer to the fact that a problem did exist in this area. This reference is contained in paragraph 309 of the Report, which is as follows: "Placing a child in a foster home does not terminate the guardian rights of his natural parents. Some private child-care agencies have refused to accept placements from juvenile courts for this reason. We do not understand why they should take this position. The same agencies undertake to care for other children over whom they do not have rights of guardianship, that is, children who are neglected or dependent. We recognize, however, that there may be ambiguities in the matter of the relationship between foster parent, court and natural parent. Such ambiguities should be eliminated in any new legislation." While the Committee stated that "such ambiguities should be eliminated in any new legislation", it gave no guidance in the matter. .....

LEGAL RELATIONSHIPS

TEXT	EXPLANATORY NOTES
88. (Cont'd)	Reference is now made to section 25 of the First Tentative Draft of the Uniform Juvenile Court Act, which reads as follows: "Rights and duties of legal custodian. A custodian, to whom legal custody has been given by the court under this Act, has the right to the physical possession of the child and the right and duty to provide for the care, protection, training and education, and the physical, mental and moral welfare of the child; subject to such conditions and limitations as the order may contain, and to the remaining rights and duties of the child's parents or guardian." In the Standard Juvenile Court Act, 1959, "legal custody" has been defined to mean: "....the relationship created by the court's decree which imposes on the custodian the responsibility of physical possession of the child and the duty to protect, train and discipline him and to provide him with food, shelter, education, and ordinary medical care, all subject to residual parental rights and responsibilities of the guardian of the person." ....

FINANCIAL LIABILITY OF MUNICIPALITIES AND PARENTS

TEXT

89. Whenever a juvenile court judge makes an order under this Act committing a child or young person to an institution, or placing a child or young person in a foster home, group home, or other shelter facility, where, if he had made such an order pursuant to the child welfare legislation of the province in which such order is made, he could have made an order requiring the parents of such child or young person, or the municipality in which such child or young person resides, to contribute to the support of such child or young person, he may make an order requiring the parents of such child or young person, or the municipality where such child or young person resides, to contribute to the support of such child or young person on such terms and conditions as he could order under the child welfare legislation of that province, and, in such case, and for such purposes, the relevant provisions and definitions of the provincial legislation shall be applied.

EXPLANATORY NOTES

Section 20(2) of the Juvenile Delinquents Act provides that, "In every such case" (referring to the disposition measures) "it is within the power of the court to make an order upon the parent or parents of the child, or upon the municipality to which it belongs, to contribute to its support such sum as the court may determine, and where such order is made upon the municipality, the municipality may from time to time recover from the parent or parents any sum or sums paid by it pursuant to such order". This section has been declared intra vires the power of the federal Parliament. (See Re Dunne [1962] O.R. 595, a decision of Schatz, J., of the Ontario High Court).

In paragraphs 337 to 339 of the Report, the Committee stated that section 20(2) had created problems in administration, and was generally not as satisfactory as the provisions for payment under the provincial welfare legislation.

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FINANCIAL LIABILITY OF MUNICIPALITIES AND PARENTS

TEXT	EXPLANATORY NOTES
89. (Cont'd)	The Committee recommended that: "Some method should be found whereby the relevant provisions of the provincial legislation relating to the financial liability of parents and municipalities would come into effect whenever an order for support is made by the juvenile court pursuant to federal law". (Recommendation 83).

RELIGIOUS CONSIDERATIONS

TEXT	EXPLANATORY NOTES
90. (1) No Protestant child dealt with under this Act shall be committed to the care of any Roman Catholic children's aid society or be placed in any Roman Catholic family as its foster home; nor shall any Roman Catholic child dealt with under this Act be committed to the care of any Protestant children's aid society, or be placed in any Protestant family as its foster hime; but this section does not apply to the placing of children in a temporary home or shelter for children, established under the authority of a statute of the province, or, in a municipality where there is but one children's aid society, to such children's aid society.	This is the present section 23 of the Juvenile Delinquents Act. If any more flexible provision is desired, this can be considered a matter for discussion. The Illinois Juvenile Court Act provides as follows: Section 5-7 sub-section (2) "When making such placement, the court, whenever possible, shall select a person holding the same religious belief as that of the minor or a private agency controlled by persons of like religious faith of the minor. In addition, whenever alternative plans for placement are available, the court shall ascertain and consider, to the extent appropriate in the particular case, the views and preferences of the minor." The California Juvenile Court Law is more rigid, and provides as follows: "All commitments to institutions or for placement in family homes under this chapter shall be, so far as practicable, either to institutions or for placement in family homes of the same religious belief as that of the person so committed or of his parents or to institutions affording opportunity for instruction in such religious belief." ????

RELIGIOUS CONSIDERATIONS

TEXT	EXPLANATORY NOTES
90. (1) (Cont'd)	The Report contains no recommendation on this point.
90. (2) If a Protestant child is committed to the care of a Roman Catholic children's aid society or placed in a Roman Catholic family as its foster home or if a Roman Catholic child is committed to the care of a Protestant children's aid society or placed in a Protestant family as its foster home, contrary to the provisions of this section, the court shall, on the application of any person in that behalf, make an order providing for the proper commitment or placing of the child pursuant to subsection (1).	

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RELIGIOUS CONSIDERATIONS

TEXT	EXPLANATORY NOTES
90. (3) No child of a religious faith other than the Protestant or Roman Catholic shall be committed to the care of either a Protestant or Roman Catholic children's aid society or be placed in any Protestant or Roman Catholic family as its foster home unless there is within the municipality no children's aid society or no suitable family of the same religious faith as that professed by the child or by its family, and, if there is no children's aid society or suitable family of such faith to which the care of such child can properly be given, the disposition of such child is in the discretion of the court.	

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TRAFFIC OFFENCES

TEXT	EXPLANATORY NOTES
91. (1) The Lieutenant-Governor in Council of a province may appoint one or more persons of suitable experience among the justices of the peace or magistrates to serve as traffic hearing officers on a full time or part time basis.	The Committee stated that "the initial premise should be that, where practicable, juvenile traffic cases, excepting perhaps those that do not involve operation of a vehicle, should be heard in the Juvenile Court." The Committee noted also that "in larger communities the juvenile courts should be able to handle most juvenile traffic offenders." However, in recommendation 14, the Committee stated that cases of a routine kind should be dealt with, through rules of court, in separate hearings by designated officers without the formalities provided for hearings under this Act. Although they do not say so, the members of the Committee apparently contemplate a situation somewhat similar to that which prevails under the law of California, viz., the appointment of traffic hearing officers (California Juvenile Court Law, article 3, sections 561 to 568). In the view of the Committee, the purpose of appointing a traffic hearing officer would be to relieve the juvenile court from a burden that would divert it from its primary purpose. (Paragraph 154).

TRAFFIC OFFENCES

TEXT	EXPLANATORY NOTES
92. A traffic hearing officer may hear and dispose of any and all cases wherein a child or young person is charged with an act or omission under a provincial Highway Act or a municipal traffic by-law that is a violation under the present Act.	The proposed Act makes a distinction as to gravity between offences and violations. It is contemplated that specific provincial traffic offences should be offences under this Act and, as such, they should be designated in a schedule - e.g. careless driving offences, obtaining a drivers' permit while disqualified, etc. All other traffic offences under provincial Highway Acts or municipal by-laws should be classified as violations under this Act, e.g., illegal parking. The traffic hearing officer should have jurisdiction over violations only.

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TRAFFIC OFFENCES

TEXT	EXPLANATORY NOTES
93. Any hearing pursuant to section 92 shall be conducted in accordance with the provincial law with respect to informations, summonses, arraignment, plea and generally the manner of conducting the hearing.	It is specifically suggested in paragraph 154 of the Report that formalities should be dispensed with in hearing routine cases. The application of the provincial provisions concerning the procedure in such cases would meet the above suggestion.

TRAFFIC OFFENCES

TEXT	EXPLANATORY NOTES
94. Upon a hearing pursuant to section 92, upon an admission by the child or young person of the commission of the traffic violation charged, or upon a finding that the child or young person did in fact commit such traffic violation, the traffic hearing officer may	See explanatory note opposite section 61 and see also paragraph 154 of the Report.
(a) reprimand the child or young person and take no further action;	
(b) direct that an information be laid as provided in section 20; or	The facts may disclose that the defendant should be dealt with as an offender or violator before the juvenile court judge, in which case a juvenile court should deal with him.
(c) make one or more of the following orders as may be provided by the provincial legislation	
(i) impose restrictions on the use of an automobile;	It is to be noted that this paragraph gives a traffic hearing officer such powers as may be exercised under provincial legislation.
(ii) suspend or revoke the driving licence;	
(iii) assess demerit points;	
(iv) impose a fine in the amount provided by the law creating the violation, but in no case shall such fine exceed the amount of $25.00.	

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TRAFFIC OFFENCES

TEXT	EXPLANATORY NOTES
95. (1) In territorial divisions where no traffic hearing officer has been appointed, the judge of the juvenile court may, with the approval of the Attorney General, issue a rule of court directing that all cases where a child or young person is charged with a traffic violation that constitutes a violation under this Act be heard by the ordinary court having jurisdiction over adults in like cases, subject to the following conditions,	Adapted from the Oregon Statute following a suggestion of the Committee (paragraphs 153 and 154). Recommendation 14 states that certain classes of cases should, in appropriate circumstances, be transferred to the ordinary courts. This recommendation is a derogation from the principle that the juvenile court should have jurisdiction over juvenile traffic cases, excepting perhaps those that do not involve operation of a vehicle. This derogation is, in the view of the Committee, justified only in regard to juvenile courts serving sparsely populated areas. The Statute of Oregon, O.R.S. ss. 419.533 to 419.541, (1959 c. 432), would be, in the words of the Committee "the most useful model for a provision defining generally the basis of juvenile court jurisdiction". This subsection gives the juvenile court judge, where no traffic hearing officer has been appointed, the authority, subject to the approval of the Attorney General, to issue a rule of court whereby jurisdiction is given to the ordinary courts over children and young persons having committed a
(a) that the ordinary court, before hearing a case, notify the juvenile court of the fact; and	
(b) that the juvenile court may direct that any such case be remanded to the juvenile court for further proceedings.	

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TEXT	EXPLANATORY NOTES
95. (1) (b) (Cont'd)	violation, viz., routine cases, such as illegal parking, short of careless driving, and cases involving the operation of vehicles other than motor vehicles. The traffic offences shall continue to be heard by the juvenile court. The purpose of this sub-section is to keep within workable limits the case load of the juvenile court in districts where the juvenile court is not organized to the point of having a traffic hearing officer, which would be the case of juvenile courts serving sparsely populated areas.

TRAFFIC OFFENCES

TEXT	EXPLANATORY NOTES
95. (2) Where a child or young person is tried by an ordinary court pursuant to this section, such ordinary court shall act in accordance with the provisions of section 93 of this Act.	
95. (3) Where a judge of a juvenile court is also a magistrate, nothing in this section shall be deemed to prevent such judge from acting as an ordinary court for the purposes of this section.	In sparsely populated areas, a magistrate may also be invested with the duty of enforcing the Juvenile Delinquents Act. This sub-section provides that the juvenile court judge can deal with juvenile traffic violations in his capacity as a magistrate, and thus dispense with the formalities required by this Act.

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JURISDICTION - ADULTS

TEXT	EXPLANATORY NOTES
96. (1) Notwithstanding anything in the Criminal Code or any other Act of the Parliament of Canada, where an adult is charged in an information with an offence under section 157, ~~157A~~, 186 or 231, of the Criminal Code, (a) in respect of a child or young person of whom he is the parent or guardian; (b) in respect of a child or young person with whom, being akin, he lives in the same household; or (c) in respect of a member of his family or household, and a child or young person of such family or household is affected, that adult may be brought before the juvenile court to be dealt with as hereinafter provided.	The present Juvenile Delinquents Act gives the juvenile court jurisdiction over the following adult offences: (a) for trial: (i) contributing to delinquency (33) (ii) inducing child to leave detention home (34) (iii) offences under the Criminal Code triable summarily, where committed in respect of children (35(1)). (b) for preliminary hearing: (iv) indictable offences under the Criminal Code where committed in respect of children (35(1)).
96. (2) Where an adult appears before the juvenile court pursuant to sub-section (1), the juvenile court shall hold a summary trial upon the information in accordance with the provisions of Part XXIV of the Criminal Code,	In paragraphs 361 to 374 inclusive, the Report deals with the problem of the juvenile court jurisdiction over adults. Recommendation 89 gives a comprehensive resumé of the views of the Committee on this problem: Recommendation 89 "Federal legislation relating to juvenile and family court jurisdistion over offences committed by adults should be altered so as to

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JURISDICTION - ADULTS

TEXT	EXPLANATORY NOTES
96. (3) Where an adult is found guilty of the offence with which he is charged, the juvenile court may, having regard to the circumstances of the case, the good of the child or young person involved, and the interests of justice (a) suspend the passing of sentence and direct that the accused be released upon entering a recognizance in Form 28 of the Criminal Code, with or without sureties, (i) to keep the peace and be of good behaviour during any period that he is freed by the court; and (ii) to appear and receive sentence when called upon to do so during the period fixed under sub-paragraph (i), upon breach of his recognizance; or (b) impose on the accused the sentence provided by the Criminal Code in respect of an offence punishable on summary conviction.	permit certain less serious offences committed by adults, and involving family relationships, to be dealt with in the Juvenile or Family Court. The basis for legislative change should be as follows: (1) The Juvenile or Family Court should have jurisdiction over certain designated offences committed in circumstances where (a) a child is the victim of an offence and there is a continuing relationship between the child and the adult charged; or (b) the offence has been committed by one member of a family or household against another and a child is substantially affected by the proceedings. (2) The Juvenile or Family Court should, so far as practicable, have exclusive original jurisdiction in the situations designated.

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JURISDICTION - ADULTS

TEXT

96. (Cont'd)

EXPLANATORY NOTES

(3) The accused should be entitled to an election as to whether he wishes to be tried by the Juvenile or Family Court or to have the matter transferred to the ordinary criminal courts. The Juvenile or Family Court should also have the power to transfer any case to the ordinary criminal courts.

(4) The Criminal Code should be reviewed to determine what offences might, in the circumstances suggested, appropriately be dealt with in the Juvenile or Family Court.

(5) The Juvenile or Family Court should have the power to dispose of appropriate cases by entering an order for the absolute or conditional discharge of an offender (Paragraph 373)"

The proposed legislation would implement, with some exceptions, the recommendations of the Committee.

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JURISDICTION - ADULTS

TEXT	EXPLANATORY NOTES
96. (Cont'd)	The draft adopts the principle of a jurisdiction over adults restricted to cases where a family or legal relationship exists between the adult charged and the child or young person who is the victim of, or who is affected by, the offence. It also implements the recommendation concerning the abolition of the contributing offence. On this point, the Report is not clear on whether the juvenile court should retain jurisdiction over the adults charged with offences under the Code which amount to the abolished contributing offence. However, the logic of the Report leads to the conclusion that the continuing relationship principle should be the basis for the juvenile court's jurisdiction over adults. The recommendation concerning jurisdiction of the juvenile court over adult offences involving a family relationship has been considerably restricted in its scope in the proposed legislation. The draft retains three offences only, while the recommendation contemplates seven.

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JURISDICTION - ADULTS

TEXT

96. (Cont'd)

EXPLANATORY NOTES

Those provided by the draft are:

(1) corrupting children (section 157 which, according to the Committee, should be re-drafted to conform with the rule of law requiring certainty of draftsmanship in penal statutes. Recommendation 88)

(2) non-support (section 186)

(3) common assault (section 231)

In addition to the above, the Committee contemplated the following:

(4) parent or guardian procuring defilement of a female child (section 155)

(5) householder permitting defilement (section 156)

(6) abduction of female under 16 (section 235)

(7) abduction of child 14 (section 236)

(8) (section 717)

In the view of the Committee, the juvenile court should have jurisdiction over "certain less serious offences" and the above offences would fulfill the criterion. It

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JURISDICTION - ADULTS

TEXT	EXPLANATORY NOTES
96. (Cont'd)	seems inappropriate to call 4, 5, 6 and 7 "less serious offences". Parliament has expressed its views on the gravity of these offences by providing that they be prosecuted by indictment and punished by 14 or 5 years in case of (4), five years in case of (5), and (6), and 10 years in case of (7). On the other hand, it is felt that offences 1, 2 and 3 may be "less serious offences", depending on the circumstances. Section 157 in its present form does not provide for an alternative mode of prosecution, but it is submitted that it should, in view of the recommendation of the Committee concerning a lesser penalty, and also in view of the fact that the type of behaviour prohibited by that section may be, depending upon the circumstances, more or less offensive or wicked. Section 717 of the Code is not brought under the draft because Parliament has already adopted a scheme whereby the behaviour envisaged by the section may be adequately dealt with by the summary conviction court.

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JURISDICTION - ADULTS

TEXT	EXPLANATORY NOTES
96. (Cont'd)	The philosophy underlying the recommendations of the Committee appears to be that the less serious offences committed by adults and involving family relationship should be dealt with in a non-punitive manner. It is best enunciated in the following passage quoted by the Committee from the Canadian Corrections Association's submission: "The aim is to make it possible in those instances where it seems possible to rebuild the family to have the case heard in the more hopeful atmosphere of the children's court.... Those provinces that have family courts will no doubt provide that some of these charges be laid there", (Paragraph 367). The proposed legislation does not implement the recommendation of the Committee that an adult defendant have the right to elect trial in the adult court, because this would defeat the purpose of the provision, which is to protect the interests of the child; and it is to be noted, that, under section 467 of the Criminal Code, a magistrate has

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JURISDICTION - ADULTS

TEXT	EXPLANATORY NOTES
96. (Cont'd)	absolute jurisdiction to try a considerable number of indictable cases in respect of which the defendant cannot, therefore, claim trial by jury or in the higher court. In view of the above reasons, the draft provides for the absolute jurisdiction of the juvenile court over offences described in section 1. The adult charged with any one of the listed offences may be brought before the juvenile court. Once before the court, the accused is to be tried summarily; in other words, the offence with which the accused is charged becomes ipso facto a summary conviction offence and must be dealt with in accordance with the provisions of Part XXIV of the Criminal Code. But, depending on the circumstances of the case as disclosed by the evidence adduced by the prosecution, and if the offence is indictable, the juvenile court may decide to continue the proceedings as a preliminary hearing, in which case the accused shall thereafter be indicted before the ordinary court. (See section 98 following).

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JURISDICTION - ADULTS

TEXT	EXPLANATORY NOTES
96. (Cont'd)	The juvenile court may, in cases concerning adults, as any other court, either convict the accused or dismiss the information. This does not carry out the recommendation according to which "the juvenile court should have the power to dispose of appropriate cases by entering an order for the absolute or conditional discharge of an offender".
	There have been adapted, instead, provisions already familiar to the criminal law, concerning the suspension of sentence. It is submitted that the question concerning the disposition of cases without actual conviction should, as far as adults are concerned, be dealt with under a revision of the general system of sentencing.

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JURISDICTION - ADULTS

TEXT

EXPLANATORY NOTES

97. (1) Where a juvenile court judge suspends the passing of sentence pursuant to paragraph (a) of sub-section (3) of section 96, he may prescribe as conditions of the recognizance, as it seems appropriate, that

(a) the accused shall stay away from the home, the other spouse or the child or young person;

(b) the accused shall abstain from conduct that tends to make the home not a proper place for the child or young person;

(c) the accused shall make necessary provision for the home;

(d) the accused shall report from time to time as he may prescribe to a probation officer or any other person designated by the court, and the accused shall be under the supervision of that person.

97. (2) The provisions of section 639 of the Criminal Code apply mutatis mutandis to a suspension of sentence pursuant to paragraph (a) of sub-section (3) of section 96, and to sub-section (1) of this section.

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JURISDICTION - ADULTS

TEXT	EXPLANATORY NOTES
98. Where, in any trial pursuant to sub-section (2) of section 96, the offence charged is indictable and it appears to the juvenile court judge that for any reason the charge should be prosecuted by indictment, he may, at any time before the accused has entered upon his defence, decide not to adjudicate and shall thereupon inform the accused of his decision and continue the proceedings as a preliminary inquiry.	469(1) of the Criminal Code,

JURISDICTION - ADULTS

TEXT

EXPLANATORY NOTES

99. (1) The provisions of the Criminal Code prescribing a time limit for the commencement of prosecution for offences against the Criminal Code apply to all proceedings under the sections of this Act relating to adults.

99. (2) The provisions of Part XXIV of the Criminal Code relating to s ls apply to any proceeding such sections.

APPENDIX "A"

SUBSTANTIVE OFFENCES

TEXT	EXPLANATORY NOTES
Offence of inducing or attempting to induce any child to leave an institution, etc.	Section 34 of the present Juvenile Delinquents Act. The Committee made no recommendation concerning this provision. It has not been re-produced in this draft of a revised Act. Subject to the opinion of informed critics of this draft, it should either be retained, dropped, or made an offence under the Criminal Code.

APPENDIX "A"

SUBSTANTIVE OFFENCES

TEXT	EXPLANATORY NOTES
Tentative draft of a revision to Section 157 of the Criminal Code	
157. (1) Every one who, in the home of a child, participates in adultery or, in the presence of a child, indulges in indecency, either by words, gestures, or conduct, or in habitual drunkenness, and thereby endangers the morals of such child is guilty of (a) an indictable offence and is liable to imprisonment for two years; or (b) an offence punishable on summary conviction.	The offence is left unchanged to the extent that every one who participates in adultery, in the home of a child, thereby endangering the morals of the child, commits an offence. The words "renders the home an unfit place for the child to be in" have been deleted, since it is submitted that they add nothing. The words "sexual immorality" have been replaced by "indecency, either by words, gestures, or conduct". "Habitual drunkenness" has been left in. The words "any other form of vice" have been deleted, since it is submitted that they are too vague. (Recommendation 88 is to the effect that section 157 should be amended with a view to limiting both its scope and the penalty that can be imposed). All the reported prosecutions taken under present 157 involve adultery or conduct that could be branded as indecency. The provision for an alternative mode of trial implements the recommendation concerning the limitation of the penalty.

.../...

APPENDIX "A"

SUBSTANTIVE OFFENCES

TEXT	EXPLANATORY NOTES
157. (2) No proceedings for an offence under this section shall be commenced more than one year after the time when the offence was committed.	This subsection has not been changed.
157. (3) For the purposes of this section, "child", means a person who is, or appears to be, under the age of seventeen years.	The age has been changed from 18 to 17 to conform with the proposed maximum age in the revision of the Juvenile Delinquents Act. It was changed from 16 to 18 in the 1955 revision of the Criminal Code.
157. (4) No proceedings shall be commenced under subsection (1) without the consent of the Attorney General.	The words "unless they are instituted by or at the instance of a recognized society for the protection of children or by an officer of a juvenile court", have been omitted. This was done for the purpose of screening even more strictly prosecutions under this section.

.....

APPENDIX "A"

SUBSTANTIVE OFFENCES

TEXT	EXPLANATORY NOTES
DRAFT OF NEW OFFENCE:	
157A. (1) Every one who, being eighteen years of age or more, counsels, aids, or abets a child or young person to commit an offence is guilty of (a) an indictable offence and is liable to imprisonment for two years; or (b) an offence punishable on summary conviction.	This section, in the Criminal Code, would replace present section 33(1) of the Juvenile Delinquents Act, wherein the penalty is a maximum fine of $500, or imprisonment for a period not exceeding two years, or both. In section 33, the contributing offence is a summary conviction offence over which a juvenile court or a magistrate have concurrent jurisdiction. Under the proposed section, the ordinary criminal courts have jurisdiction over the offence, except where the offence has been committed by a related adult, in which case the accused would be brought before the juvenile court. In such cases, the juvenile court might proceed to try the accused for the offence punishable on summary conviction, or order that he be prosecuted by indictment before the ordinary courts. The result of abolishing section 33 of the Juvenile Delinquents Act would mean that fewer cases concerning adults would be prosecuted in juvenile court.

....

APPENDIX "A"

SUBSTANTIVE OFFENCES

TEXT	EXPLANATORY NOTES
157A. (1) (Cont'd)	The criterion would be the continuing relationship of the adult charged with the child. The purpose of establishing this criterion would be that the disposition made in an adult case should be, to the extent possible, for the good of the child, and not in conflict with what the juvenile court may be trying to accomplish with the child. Most of the reported cases under section 33 concern sexual intercourse with a "child". Such cases would no longer be brought in juvenile court.

....

APPENDIX "A"

SUBSTANTIVE OFFENCES

TEXT	EXPLANATORY NOTES
157A. (1) (Cont'd)	An adult would only be prosecuted in juvenile court when he is in a "continuing relationship" with a child, which really means of the same household, and commits an offence contrary to sections 157 (corrupting a child), 186 (providing necessaries), 231 (assault), or 157A (aiding and abetting a child to commit an offence). Although the section draws particular attention to counselling, aiding, or abetting a juvenile, it may be redundant, in view of section 21 of the Criminal Code.
157A. (2) For the purposes of this section, "offence" means an offence as defined by the Children and Young Persons Act and includes a violation as defined by that Act.	

...9

APPENDIX "B"

AFTER CARE

TEXT	EXPLANATORY NOTES
	In recommendation 26 (and paragraph 186), the Committee recommended that, following release from an institution, every young person should "be subject to the jurisdiction of the juvenile court for a period of up to two years, during which time he may be required by the court to observe certain conditions and to report to a probation officer or other designated person".
	Recommendation 82 and paragraphs 335 and 336 of the Report are also concerned with after care, and suggest that responsibility for after care be assigned to the probation officer, and that after care should be "subject to the direction and control of the juvenile court". It is also recommended that after care be compulsory.
	In other words, the Committee recommended that there be federal legislation concerning "after care".
	In the brief submitted by some of the Ontario juvenile court judges to the conference at Couchiching, the remark concerning recommendation 26 was "Not Approved".
	With regard to recommendation 82, the brief stated as follows:

.....

APPENDIX "B"

TEXT	AFTER CARE	EXPLANATORY NOTES
		"After care is an urgent necessity, both for the young offender and the parents. Such care should be the responsibility of the Department of Reform Institutions".
		At present, there are no provisions in this discussion draft concerning the role to be played by the juvenile court in the field of "after care". Further consideration should be given to the advisability of such legislation, and, if its inclusion in the federal Act is deemed advisable, to the specific points to be covered in the legislation.

....

APPENDIX "C"

JUVENILE COURT COMMITTEES

TEXT

EXPLANATORY NOTES

Section 27 of the present Act provides for the establishment of juvenile court committees. Their duties are set out in Section 28.

Recommendation 45 of the Report calls for the removal of such provisions from the federal legislation, except as they relate to matters of procedure.

Recommendation 44 calls for the clarification of the function of the "juvenile court committee". The Committee pointed out the two functions of such committees:

liaison with the community and that of watchdog. In paragraph 232 of the Report, the Committee stated:

"The 'public watchdog' or 'sentinel' role seems to us to be the proper function for the juvenile court committee to perform".

In paragraph 235, the Committee referred to matters properly the subject matter of federal legislation, i.e., matters of procedure, "such as the right of members of the committee to be present at Juvenile Court Hearings."

....

APPENDIX "C"

JUVENILE COURT COMMITTEES

TEXT

EXPLANATORY NOTES

At the Couchiching Conference on Justice and the Juvenile, held in April of 1967, Group "B" (which studied "The Court") discussed recommendation 44. The general consensus of opinion was to approve of the public relations function of the Committee, but to disapprove of the watchdog function.

If the proposed provisions concerning the admission into the court room of limited numbers of the press become legislation, there is no longer any need for the "sentinel" role.

The California "juvenile justice commission" is provided for in sections 525 and 526 of the California Juvenile Court Law. Its duties are set out in section 529: these duties are very similar to those performed by the grand jury in Ontario; they include the inspection of and reporting concerning publicly administered institutions, which include jails or lock-ups where minors may be confined. Its duties generally are to "inquire into the administration of the juvenile court law in the county or region in which the commission serves."

....

APPENDIX "C"

JUVENILE COURT COMMITTEES

TEXT

EXPLANATORY NOTES

At pages 19 and 20 of "An Interim Report and Recommendations on Co-ordination of Government and Community Resources in the TREATMENT OF JUVENILE DELINQUENCY for Rural British Columbia", by C.W. Gorby (1963), reference is made to the use of juvenile court committees. The account of the use of such committees cited here would suggest that on certain occasions a juvenile court judge might find it of assistance to be able to have the power to form and call upon such a committee.

This draft includes no provision concerning juvenile court committees. The specific mention by the Committee that the rights of members of the juvenile court committee to be present at juvenile court hearings would be a proper subject for federal legislation is covered by the draft section under "hearings", which provides that such persons "shall be admitted who, in the opinion of the judge, have a direct interest in the case or in the work of the court". Actually, as presently drafted, this "right" to be present is subject to the discretion of the judge.

....

APPENDIX "C"

JUVENILE COURT COMMITTEES

TEXT

EXPLANATORY NOTES

If the consensus of opinion of those discussing this draft is to the effect that there should be federal legislation on the subject of juvenile court committees, the point will have to be considered again.

APPENDIX "D"

DELETION OF THE DESIGNATIONS "VIOLATOR", "CHILD OFFENDER" AND "YOUNG OFFENDER"

TEXT	EXPLANATORY NOTES
	This discussion draft has followed the recommendations contained in the Report to the effect that the designation "juvenile delinquent" be replaced, by the designations "violator", "child offender" and "young offender", as the case may be. (There would no longer be an offence of delinquency, and a child or young person who has committed a violation or an offence, as defined in the Act, would be designated accordingly a "violator", a "child offender", or a "young offender"). There appears to be no binding reason why these designations have to be retained, as they add little to the structure of the Act. A person convicted of theft under the Criminal Code is not designated a "thief" by the Code, nor is a person convicted of rape designated a "rapist", nor is there any general designation in the Code such as "offender" or "criminal". It is submitted that consideration might be given to dropping the designations "violator", "child offender", and "young offender". Instead, where necessary in the Act, distinctions could be made by such terms as a

....

APPENDIX "D"

DELETION OF THE DESIGNATIONS "VIOLATOR", "CHILD OFFENDER AND "YOUNG OFFENDER"

TEXT	EXPLANATORY NOTES
	"a child who has been found to have committed a violation", or "a young person who has been found to have committed an offence", etc. On the whole, it would appear that the dropping of labels or designations altogether is a further step in the direction of removing stigmatic terms.

FORM 1

(section 9)

Order of transfer to Juvenile Court

CANADA
Province of
(territorial division)

Whereas A.B., of
hereinafter called the defendant, has been brought before me on the charge that (state the offence as in the information):

And whereas the defendant is apparently or actually over the age of sixteen and under the age of eighteen years;

And whereas it appears to the Court that the good of the said defendant and the interest of the community demand it;

Therefore, I, Justice (or magistrate) of the Summary Conviction Court, order that the said A.B.
be taken before the Juvenile Court, pursuant to section 9 of the Children and Young Persons Act

GIVEN under my hand this day of 19 ,
at

Justice (or magistrate)
in and for

FORM 2

(section 20)

Information

CANADA
Province of
(territorial division)

This is the information of C.D., of (occupation), hereinafter called the informant.

The informant says that (if the informant has not personal knowledge, state that he has reasonable and probable grounds to believe and does believe, and state the offence or violation) thereby committing an offence (or a violation) under the Children and Young Persons Act.

The informant further says that the said A.B. is or is believed to be (or resides or is believed to reside) within the territorial jurisdiction above mentioned.

Sworn before me
this day of
A.D.

at

Signature of informant

A Judge of the Juvenile
Court in and for

FORM 3

(section 21)

Summons

CANADA
Province of
(territorial division)

TO A.B. of (occupation):

WHEREAS an information has this day been received by me to the effect that you, a child (or young person) under the Children and Young Persons Act, (state the offence as in the information)

This is therefore to command you, in Her Majesty's name, to appear before me on the day of , A.D. 19 , at o'clock in the noon, at the Juvenile Court (state address of the court), to answer to the said information and to be dealt with according to law.

AND FURTHER take notice hereby that you have the right to be represented and assisted by counsel of your choice among the members of the Bar of this Province.

Dated this day of A.D.
, at

A Judge of the Juvenile Court
in and for

FORM 4

(section 22)

Warrant of arrest

CANADA
Province of
(Territorial division)

To the peace officers in the said (territorial division):

Whereas an information has this day been received by me to the effect that A.B., a child (or young person) under the Children and Young Persons Act

(state the offence as in the information) thereby committing an offence (or a violation, as the case may be) under the Children and Young Persons Act.

This is, therefore, to command you in Her Majesty's name forthwith to arrest the said A.B. and to bring him before me (or another judge for the same territorial jurisdiction) to answer to the said information and to be dealt with according to law.

Dated this day of
A.D. , at

_____
A Judge of the Juvenile Court
in and for

FORM 5

(section 23)

Warrant where summons is disobeyed or cannot be served

CANADA
Province of
(Territorial division)

To the peace officers in the said (territorial division):

Whereas on the day of A.D., , an information was received by , a Judge of the Juvenile Court to the effect that, in the of , county (or district) of , on the day of , A.D., , A.B. a child (or young person) under the Children and Young Persons Act (state the offence) thereby committing an offence (or a violation, as the case may be) against the Children and Young Persons Act;

And whereas a summons to the said A.B. was issued commanding him, in Her Majesty's name, to appear on the day of A.D. , at o'clock in the noon, at , before me to answer to the said charge and to be dealt with according to law;

And whereas it appears (* or **);

This is therefore to command you, in Her Majesty's name, forthwith to arrest the said A.B. and to bring him before me, to answer to the said information and to be dealt with according to law.

Dated this day of A.D. 19 ,
at

A Juvenile Court Judge
in and for

* that the said A.B. has failed to appear at the time and place appointed by the said summons and it has been proved that the summons was duly served upon him.

** that the said summons cannot be served upon the said A.B.

FORM 6

(section 25)

Endorsement of Warrant

CANADA
Province of
(territorial division)

Pursuant to application this day made before me, I hereby authorize the execution of this warrant within the said (territorial jurisdiction).

Dated this day of A.D., 19 ,
at

A Judge of the Juvenile Court
in and for

FORM 7

(section 24)

Notice to Parents

CANADA
Province of
(territorial division)

To A.B. (add as many names as the case may require) of :

Whereas it has been stated before me that you are the parent (or guardian, as the case may be) (if parent, state the relationship) of A.B., a child (or young person) under the Children and Young Persons Act;

This is therefor to notify you that *

And further that the said A.B. has the right to be represented before the Court by counsel.

I do hereby command you to appear before me on the day of A.D. 19 , at o'clock in the noon, at , to attend the proceedings to be held there and then concerning the said A.B.

And you are hereby notified that your failure to comply with this notice may constitute contempt of court.

Dated this day of A.D. ,
at

A Judge of the Juvenile Court
in and for

* Insert whichever of the following is applicable
(a) an information has been received against the said A.B. to the effect that (state the offence) thereby committing an offence or violation under the Children and Young Persons Act;

(b) the said A.B. is being detained by order of the undersigned judge pending trial under an information to the effect that (state the offence)

FORM 8

(section 27)

Notice to Friend or Relative

CANADA
Province of
(territorial division)

TO C.D. of :

Whereas it has been stated before me that you are the friend (or relative) (if relative, state the relationship) of A.B., a child (or young person) under the Children and Young Persons Act;

This is therefore to notify you that *

And further that the said A.B. has the right to be represented before the Court by counsel.

I do hereby inform you that you may appear before me on the day of A.D. 19 , at o'clock in the noon, at , to attend the proceedings to be held there and then concerning the said A.B.

Dated this day of A.D. 19 ,
at

A Judge of the Juvenile Court
in and for

* Insert whichever of the following is applicable
(a) an information has been received against the said A.B. to the effect that (state the offence) thereby committing an offence or violation against the Children and Young Persons Act;

(b) the said A.B. is being detained by order of the undersigned judge pending trial under an information to the effect that (state the offence)

FORM 9

(section 28)

Order for informal adjustment

CANADA
Province of
(territorial division)

To G.H., a probation officer for the Juvenile Court of the county (or district) of

Whereas K.L., hereinafter called the informant, has appeared before me in order to lay an information under the Children and Young Persons Act against A.B., a child (or young person) under the said Act;

And whereas there is evidence or belief upon which the said information could be received;

And whereas, in the interests of justice and for the good of A.B., it appears expedient to enquire into the advisability of adjusting the case;

This is therefore to command you to confer with the informant, the said A.B. and his parent, parents or guardian, or other interested persons, with a view to adjusting the case without the laying of an information;

And further to report to me within two months as of this date.

Dated this day of A.D. 19 ,
at

_____
A Judge of the Juvenile Court
in and for

FORM 10

(section 40)

Deposition of a Witness

CANADA
Province of
(territorial division)

These are the depositions of X.Y., of , and M.N., of , taken before me this day of A.D. 19 , at , in the presence and hearing of A.B., hereinafter called the defendant, concerning whom an information has been received that he (state the offence).

X.Y., having been duly sworn, deposes as follows: (insert deposition as nearly as possible in words of witness).

M.N., having been duly sworn, deposes as follows:

I certify that the depositions of X.Y., and M.N., written on the several sheets of paper hereto annexed to which my signature is affixed, were taken in the presence and hearing of the defendant (and signed by them respectively, in his presence.

In witness whereof I have hereto signed my name.

A Judge of the Juvenile Court
in and for

FORM 11

(section 41)

Warrant of committal of witness for refusing to be sworn or to give evidence

CANADA
Province of
(territorial division)

To the peace officers in the (territorial division):

Whereas A.B. of , hereinafter called the defendant, has been charged that (set out offence as in the information):

And Whereas E.F. of , hereinafter called the witness, attending before me to give evidence for (the prosecution or the defence) concerning the charge against the accused (refused to be sworn, or, being duly sworn as a witness, refused to answer certain questions concerning the charge that were put to him, or refused or neglected to produce the following writings, namely, or refused to sign his deposition) having been ordered to do so, without offering any just excuse for such refusal or neglect;

This is therefore to command you, in Her Majesty's name, to take the witness and convey him safely to the prison at , and there deliver him to the keeper thereof, together with the following precept:

I do hereby command you, the said keeper, to receive the said witness into your custody in the said prison and safely keep him there for the term of days, unless he sooner consents to do what was required of him, and for so doing this is a sufficient warrant.

Dated this day of A.D., 19 ,
at

A Judge of the Juvenile Court
in and for

FORM 12

(section 42)

Conviction for contempt

CANADA
Province of
(territorial division)

Be it remembered that on the day of A.D. , at in the (territorial division), E.F. of , hereinafter called the defaulter, is convicted by me for contempt in that he did not attend before (set out court) to give evidence on the hearing of a charge that (state fully offence with which defendant was charged), although (duly subpoenaed or bound by recognizance to attend to give evidence, as the case may be) and has not shown before me any sufficient excuse for his default;

Wherefore I adjudge the defaulter for his said default, (set out punishment as authorized and determined in accordance with section 42).

Dated this day of A.D.
at

A Judge of the Juvenile Court
in and for

FORM 13

(section 42)

Warrant of committal for contempt

CANADA
Province of
(territorial division)

To the peace officers in the said (territorial division) and to the keeper of the (prison) at

Whereas E.F. of , hereinafter called the defaulter, was on the day of A.D. , at , convicted before for contempt in that he did not attend before to give evidence on the hearing of a charge that (state offence as in the information) against A.B. of , although (duly subpoenaed or bound by recognizance to appear and give evidence in that behalf, as the case may be) and did not show any sufficient excuse for his default;

And Whereas in and by the said conviction it was adjudged that the defaulter (set out punishment adjudged);

And Whereas the defaulter has not paid the amounts adjudged to be paid; (delete if not applicable)

This is therefore to command you, in Her Majesty's name, to take the defaulter and convey him safely to the prison at and there deliver him to the keeper thereof, together with the following precept:

I do hereby command you, the said keeper, to receive the defaulter into your custody in the said prison and imprison him there * and for so doing this is a sufficient warrant.

Dated this day of A.D.
at

A Judge of the Juvenile Court
in and for

* Insert whichever of the following is applicable:
(a) for the term of
(b) for the term of unless the said sums and the costs and charges of the committal and of conveying the defaulter to the said prison are sooner paid, or
(c) for the term of and for the term of (if consecutive so state) unless the said sums and costs and charges of the committal and of conveying the defaulter to the said prison are sooner paid.

FORM 14

(section 52)

Order of Transfer from Juvenile Court to Ordinary Court

CANADA
Province of
(territorial division)

Be it remembered that on the day of A.D. 19 , A.B., being a young person under the Children and Young Persons Act, was before me upon an information, to wit: (state the offence as in the information) thereby committing an offence under the Children and Young Persons Act;

And whereas, before a plea was taken by me, *

Therefore, I, Judge of the Juvenile Court, order that the said A.B. be proceeded against in the ordinary court in accordance with the provisions of the Criminal Code;

And further, I request the said ordinary court to remand the said A.B. before the Juvenile Court for disposition, if a conviction is entered against the said A.B. by the said ordinary court.

Dated this day of A.D. 19 ,
at

A Judge of the Juvenile Court
in and for

* Insert whichever of the following is applicable:

(a) the said A.B. requested to be tried by the ordinary court;

(b) the Attorney General requested that the said A.B. be tried by the ordinary court;

FORM 15

(section 53(1)(a))

Transfer from Juvenile Court to ordinary Court for both trial and sentence

CANADA
Province of
(territorial division)

Whereas A.B., being a young person under the Children and Young Persons Act, was before me upon an information, to wit: (state the offence as in the information), thereby committing an offence under the Children and Young Persons Act;

And Whereas, at an adjudicatory hearing upon the said information, notice of which was given to the parent (or guardian) of the said A.B., prima facie evidence was adduced that the said A.B. has committed an offence against the Children and Young Persons Act;

And Whereas a full investigation has been conducted under my supervision into the background of the said A.B. and the circumstances of the offence;

I find that the said A.B. is not subject to committal to an institution for the mentally deficient or the mentally ill;

I further find that *

And Whereas the good of the said A.B. and the interest of the community demand it;

I therefore order that the said A.B. be proceeded against before the ordinary court in accordance with the provisions of the Criminal Code.

Dated this day of A.D. 19 ,
at

Judge of the Juvenile Court
in and for

* Insert whichever of the following is applicable:

(a) the said A.B. is not suitable for treatment in any available institution or facility designed for the care and treatment of young persons.
(b) the safety of the community requires that the young person continue under restraint for a period longer than I would, in case of an adjudication that the said A.B. is a young offender, be authorized to order.

FORM 16

(section 53(1)(b))

Transfer from Juvenile Court to
ordinary Court for trial only

CANADA
Province of
(territorial division)

Whereas A.B., being a young person under the Children and Young Persons Act, was before me upon an information, to wit: (state the offence as in the information), thereby committing an offence under the Children and Young Persons Act;

And Whereas, at an adjudicatory hearing upon the said information, notice of which was given to the parent (or guardian) of the said A.B., prima facie evidence was adduced that the said A.B. has committed an offence against the Children and Young Persons Act;

And Whereas a full investigation has been conducted under my supervision into the background of the said A.B. and the circumstances of the offence;

I find that the said A.B. is not subject to committal to an institution for the mentally deficient or the mentally ill;

And Whereas the good of the said A.B. and the interest of the community demand it;

I therefore order that the said A.B. be proceeded against in the ordinary court for the purpose of his trial in accordance with the provisions of the Criminal Code.

And I further request that, if the said A.B. is found guilty of the above mentioned offence by the ordinary court, he be remanded by the said ordinary court for disposition before the Juvenile Court.

Dated this day of A.D. 19 ,
at

A Judge of the Juvenile Court
in and for

FORM 17

(section 56)

Adjudication Order

CANADA
Province of
(territorial division)

Whereas on the day of , A.D. 19 , A.B., being a child (or young person) under the Children and Young Persons Act, appeared before me to answer to an information, to wit: (state the allegations of the information);

And Whereas *

And Whereas **

After considering the matter, I therefore ***

Dated this day of , A.D. 19 ,
at

Judge of the Juvenile Court
in and for

Insert whichever of the following is applicable:

* (a) the said A.B. has admitted the facts of the information
(b) the said A.B. has denied the facts of the information

** (a) I have found the admission of the said A.B. to have been corroborated.
(b) I have heard the prosecutor, defendant and witnesses.

*** (a) adjudge the information to have been proved
(b) dismiss the information

FORM 18

(section 57(b))

Provisory Adjudication Order

CANADA
Province of
(Territorial division)

Whereas I, the undersigned Judge of the Juvenile Court, have adjudged the information to have been proved that A.B. (state the offence or violation as in the information;

And Whereas I have heard evidence on the question of the adjudication to be made, and have considered the pre-disposition report concerning the said A.B.;

I therefore adjourn the case for a period to expire on the day of , A.D., 19 ,

And further, I order that the said A.B. *

1) etc.

And I further order the said A.B. to appear before me on the day of , A.D., 19 , for final adjudication.

Dated this day of , A.D. 19 ,
at

Judge of the Juvenile Court
in and for

* include any one or more of the conditions set out in paragraph (b) of section 57.

FORM 19

(section 57)

Final Adjudication

CANADA
Province of
(territorial division)

Whereas *

I therefore **

Dated this day of , A.D. 19 ,
at

Judge of the Juvenile Court
in and for

* Insert whichever of the following is applicable.

(a) I, the undersigned Judge of the Juvenile Court, have adjudged the information to have been proved that A.B. (state the offence or violation as in the information), and
whereas I have heard evidence on the question of the adjudication to be made and considered the pre-disposition report concerning the said A.B.;

(b) I, the undersigned Judge of the Juvenile Court, after having adjudged the information to have been proved that A.B. (state the information), and after having adjourned the case and considered the behaviour of the said A.B. thereupon;

** Insert whichever of the following is applicable.

(a) find that the said A.B., having appeared before me, is not likely to engage in further offences or violations, and I therefore discharge the said A.B. absolutely.

(b) find that the evidence furnishes good grounds for believing that the said A.B. is a child (or young person) in need of care or supervision, in that (state grounds), and therefore I dismiss the information and order that the said A.B. be proceeded against under provincial legislation in that behalf.

(c) adjudge the said A.B. to be (whichever is the case)
(i) a child offender
(ii) a young offender
(iii) a violator

FORM 20

(sections 58, 59, 60 and 61)

Order of disposition

CANADA
Province of
(territorial division)

Whereas A.B., a child (or young person) under the Children and Young Persons Act, has been adjudged on the day of A.D. 19 , to be a (young offender, child offender, or violator, as the case may be);

And Whereas I have heard evidence on the question;

I therefore order the following disposition, to wit: (state the disposition as provided in sections 58, 59, 60 or 61 of the Children and Young Persons Act, as the case may be).

Dated this day of , A.D. 19 ,
at

_____
Judge of the Juvenile Court
in and for

FORM 21

(section 62)

Probation Order

CANADA
Province of
(territorial jurisdiction)

Whereas A.B., being a child (or young person) under the Children and Young Persons Act, was before me upon an information, to wit: (state the offence as in the information), thereby committing an offence under the said Children and Young Persons Act;

And Whereas I, the undersigned Judge of the Juvenile Court, on the day of , A.D. 19 , having adjudged the information to have been proved, *

And whereas the said A.B. resides (or will shortly reside) in the of , being my territorial jurisdiction (or being the territorial jurisdiction of)

I therefore order that the said A.B. be placed under the supervision of E.F., a probation officer of the municipality of (or G.H., of the municipality of , a person designated by me as being suitable to supervise the said A.B.), hereinafter referred to as the probation officer, from the date of this order until the day of , A.D. 19 . (period not exceeding two years).

I further order that the said A.B. abide by the following rules:

1. To be of good behaviour;

2. To appear before me upon request so that I may vary the terms of this order;

3. To report in person to the probation officer at least a month, upon a day and place set by the probation officer, and at such other times as may be especially required by the probation officer;

4. To (insert such further conditions as the judge considers desirable, pursuant to section 62(1)(g) of the Act; for example:

...

* Insert whichever of the following is applicable:

(a) adjudged the said A.B. to be

(whichever is the case)

(i) a violator
(ii) a child offender
(iii) a young offender

(b) adjourned the case until the day of , A.D. 19 .

FORM 21 (Cont'd)

(a) make restitution in cash to I.J. (etc), a person (or persons) injured by the offence, in the following amounts:

Name and address .....Amt. .....
to be paid within months, and payable to the clerk of this court, Box 00, ;

(b) attend school regularly and be subject to the discipline of the school, not leaving the school without the written permission of the probation officer;

(c) work steadily or search diligently for employment, not leaving any employment without good and sufficient reasons;

(d) be in his home not later than o'clock, p.m., Sunday to Thursday, and o'clock p.m., Friday and Saturday, unless he is accompanied by a parent or legal guardian, or he has the written permission of the probation officer;

(e) immediately inform the probation officer of any change, or intended change, of address, and not to move from the place of residence without express permission from the probation officer;

(f) not associate with persons designated by the Court).

And notice is hereby given that if the said A.B. fails to observe the above conditions, he may be returned to the court to be dealt with as the court may decide, pursuant to section 65 of the Children and Young Persons Act.

Dated this day of , A.D. 19 ,
at .

Judge of the Juvenile Court
in and for

The terms and conditions of this Order have been explained to me and I thoroughly understand them.

Witness

Signed A.B.

Taken and acknowledged before me
the day of ,
A.D. 19 , at the of
, in the
of .

Judge

FORM 22

(section 64)

Order of Discharge

CANADA
Province of
(territorial division)

Whereas I, the undersigned Judge of the Juvenile Court, have adjudged, on the day of , A.D. 19 , A.B., a child (or young person) under the Children and Young Persons Act, to be a (young offender, a child offender or a violator), pursuant to the said Act;

And Whereas I find that the said A.B. no longer requires the supervision of the Juvenile Court;

I therefore discharge the said A.B. from the supervision of the Court.

Dated this day of , A.D. 19 ,
at

Judge of the Juvenile Court
in and for